No. 2008-0857

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY, OHIO
CASE NO. 07-CO-15

ROSE KAMINSKI,
Plaintiff-Appellee,

v.

METAL & WIRE PRODUCTS COMPANY,
Defendant-Appellant.

APPELLANT METAL & WIRE PRODUCTS COMPANY'S MERIT BRIEF

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TABLE OF CONTENTS

Page

Page

APPENDIX **Appx. Page**

TABLE OF AUTHORITIES

Page

CASES

Page

Page

Page

Page

Page

CONSTITUTIONAL PROVISIONS

STATUTES

OTHER ACTS

OTHER AUTHORITIES

Page

I. INTRODUCTION

The primary issue in this appeal is whether *Johnson v. BP Chemicals, Inc.* (1999), 85 Ohio St.3d 298 requires the conclusion that a statute enacted six years after *Johnson* is unconstitutional. This Court's recent cases suggest that such an inquiry requires an examination of both the current R.C. 2745.01 and *Johnson*'s analysis of the Ohio Constitution. See *Arbino v. Johnson & Johnson* (2007), 116 Ohio St.3d 468, ¶24 (statutes enacted as a legislative response to Ohio Supreme Court decisions "warrant a fresh review of their individual merits"); *Groch v. Gen. Motors Corp.* (2008), 117 Ohio St.3d 192, ¶146-147 (Court would not follow a prior decision with "fundamental weaknesses" in constitutional analysis and reasoning when determining the constitutionality of statute enacted as a legislative response to conflicting Ohio Supreme Court decisions).

Like the prior case this Court declined to follow in *Groch*, the 1999 *Johnson* decision suffers from fundamental weaknesses in constitutional analysis. The breadth of *Johnson*'s misinterpretation of Sections 34 and 35, Article II, however, counsel that the severely flawed decision be overruled, not simply distinguished or limited. *Johnson* interprets the text of two constitutional provisions adopted to *expand* legislative power over the workplace as *restraints* on legislative power in the workplace, thereby eliminating the General Assembly's plenary legislative power in a specific area of law. The very breadth of the holding, as well as its interference with the separation of powers that forms the core principle of Ohio's constitutional system, require a strong and

unequivocal response. The doctrine of stare decisis poses no barrier to this Court's correction of its own erroneous interpretation of state's constitution. To the contrary, "[n]o amount of adjudication can justify a practical abrogation of the Constitution." *State ex rel. Guilbert v. Yates* (1902), 66 Ohio St. 546, 548.

II. STATEMENT OF THE CASE AND FACTS

A. The Statute.

The General Assembly enacted current R.C. 2745.01, effective April 7, 2005,[1] out of concern that "Supreme Court decisions have opened the door for employees to continue to sue employers for workplace injuries in addition to availing themselves of the 'no fault' workers' compensation system," and that "the standard for proving an intentional tort has been essentially reduced to a negligence-based standard that is far below any reasonable definition of an intentional tort." Ohio Capitol Connection, Minutes of House Commerce & Labor Committee (Aug. 25, 2004), p. 1.

To mitigate this unfairness and confine intentional tort claims to employer conduct that is truly intentional, R.C. 2745.01 created a statutory intentional tort claim that supersedes *Blankenship v. Cincinnati Milacron Chem., Inc.* (1982), 69 Ohio St.2d 608.[2] The statutory cause of action created by R.C. 2745.01 requires a plaintiff to prove by a

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[1] See Appendix ("Appx.") 81.

[2] Section R.C. 2745.01(D) clarifies that the statute "does not apply to claims arising during the course of employment involving discrimination, civil rights, retaliation, [or] harassment in violation of Chapter 4112 of the Revised Code, intentional infliction of emotional distress not compensable under Chapters 4121 and 4123 of the Revised Code, contract, promissory estoppel, or defamation." (Appx. 81.)

preponderance of the evidence "that the employer committed the tortious act with the intent to injure another or with the belief that the injury was substantially certain to occur." (Appx. 81.) R.C. 2745.01(B), in turn, defines the phrase "substantially certain" as acts by the employer taken "with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death." Id. And R.C. 2745.01(C) creates a rebuttable presumption of intent where an employer removes an equipment safety guard or deliberately misrepresents the toxicity or hazardous nature of a substance. Id.

B. <u>The Accident and Lawsuit.</u>

Appellant Metal & Wire Products Company ("Metal & Wire") is a full service metal fabrication firm with a manufacturing facility in Salem, Ohio. Metal & Wire employed Appellee Rose Kaminski ("Kaminski") as a press operator, responsible for running an automatic press that stamped flat steel pieces from a coil of steel. (Supp. 125-128, 131-134, Kaminski Deposition ("Kaminski Dep.") 18-21, 29-32.) Her job was to turn the press on, make sure the coil feed ran smoothly, confirm the stamped pieces met specifications and, when the steel coil ran out, find her supervisor and have him load another coil. (Supp. 128, 134-137, id. 21, 32-35; Supp. 165, 192, Stivers Deposition ("Stivers Dep.") 24, 65.)

On June 30, 2005, Kaminski's automatic press ran out of steel coil. (Supp. 136-137, Kaminski Dep. 34-35.) Kaminski claims she could not locate her supervisor, and instead asked co-worker Toby Stivers ("Stivers") to load the new coil. (Supp. 138-139, 142, Kaminski Dep. 36-37, 58; Supp. 166, Stivers Dep. 25.)

Stivers used a forklift to retrieve a steel coil about five feet tall, two-to-three inches thick and weighing over 800 pounds. (Supp. 167, 170, Stivers Dep. 26, 30; Supp. 88, 91, Bellinger Deposition ("Bellinger Dep.") 24, 40.) Because the coil cradle was located on the far right-hand side of Kaminski's press, Stivers determined he needed to shift the steel coil from the right fork to the left fork to load the coil. (Supp. 84, Bellinger Dep. 20; Supp. 164, Stivers Dep. 23.) But Stivers would not put the coil down to shift forks unless someone was available to steady the coil. (Supp. 172, Stivers Dep. 32.)

Kaminski was barely over 5 feet tall, and the standing, 800-pound coil came up to her head. (Supp. 146, Kaminski Dep. 63.) Stivers decided Kaminski was too small to steady the coil, and he told her he needed to find the supervisor to assist him. (Supp. 164-165, 172, 174, Stivers Dep. 23-24, 32, 34; Supp. 143, Kaminski Dep. 59.) Kaminski told Stivers not to "worry about it," and said she "could do it because it was a small coil." (Supp. 165, Stivers Dep. 24.) Stivers warned Kaminski that he did not "really feel comfortable with you doing it." (Id.) But when Kaminski insisted she could help, Stivers relented. (Supp. 165, Stivers Dep. 24; Supp. 143, Kaminski Dep. 59.)

Kaminski attempted to balance the steel coil while Stivers backed the forklift away from the coil and then came forward. (Supp. 177, Stivers Dep. 37; Supp. 146-147, Kaminski Dep. 63-64.) Metal & Wire workers steadying a coil generally directed the forklift operator as he or she was coming forward to help guide the proper fork into the coil; Kaminski said nothing. (Supp. 180, 190-191, Stivers Dep. 42, 63-64.) As Stivers

was coming forward, one of the forks bumped the coil and the coil fell onto Kaminski's legs and feet resulting in injury. (Supp. 148-151, Kaminski Dep. 65-68.)

Prior to Kaminski's injury, no one had been injured at the Salem facility while steadying coil. (Supp. 185, 188, Stivers Dep. 58, 61; Supp. 94-95, Bellinger Dep. 65-66; Supp. 113-114, Frederick Dep. at 64-65.) And when Kaminski spoke to a co-worker about her injury, she confirmed "it was an accident." (Supp. 106, Frederick Dep. at 50.)

Soon after her injury, Kaminski applied for and received workers' compensation benefits. (Supp. 122, 154-155, Kaminski Dep. 9, 92-93.) She then filed this lawsuit, in which she alleged that: 1) Metal & Wire committed an intentional tort under R.C. 2745.01; but 2) current R.C. 2745.01 "in its entirety is unconstitutional," and 3) Metal & Wire should be held liable for her injuries under Ohio's common law "substantial certainty" theory of liability. (Supp. 76-78, Pl.'s Compl., ¶¶8-16.) Metal & Wire's Answer denied liability and asserted a counterclaim for a declaratory judgment that R.C. 2745.01 is constitutional. (Supp. 70-71, Def.'s Ans., ¶¶17-28.)

C. The Trial Court Upholds R.C. 2745.01 and Grants Metal & Wire's Motion for Summary Judgment.

The Trial Court first resolved the declaratory judgment claims, concluding that 2745.01 was constitutional and governed Kaminski's intentional tort claim. Metal & Wire then moved for summary judgment on the merits of Kaminski's employment intentional tort claim. The Trial Court granted the motion, explaining that a "fair reading" of R.C. 2745.01 compelled the conclusion "that the Defendant has not acted with the intent to injure the Plaintiff nor with deliberate intent to cause her injury."

(Appx. 30.) The Trial Court emphasized that "[i]t cannot be overlooked that [Kaminski] was injured when she voluntarily took the task of assisting in loading a coil into her press * * *." (Id.)

D. The Court of Appeals Strikes Down R.C. 2745.01 and Resolves Issues Not Decided by the Trial Court.

In her appeal, Kaminski assigned two errors in the Trial Court's final judgment: 1) the Trial Court erred in concluding that R.C. 2745.01 was constitutional; and 2) even if R.C. 2745.01 were constitutional, genuine issues of material fact precluded summary judgment under R.C. 2745.01. (Supp. 30.) Metal & Wire's opposing brief pointed out the broad police powers possessed by the General Assembly; explained the differences in statutory language between current R.C. 2745.01 and its predecessors; noted that stare decisis does not apply with the same force in constitutional cases; and argued that Kaminski did not possess sufficient evidence to create a genuine issue of material fact regardless of the applicable legal standard.

The Seventh District Court of Appeals first concluded that R.C. 2745.01 was unconstitutional in its entirety. Relying on this Court's reasoning in *Johnson* (interpreting different statutory language), the Seventh District held that it was "reasonable to conclude that the General Assembly's latest attempt at codifying [the] employer intentional tort is unconstitutional as well." (Appx. 12, at ¶28.) Turning to the merits of Kaminski's employment intentional tort claim, the Court acknowledged that "the trial court did not actually consider whether appellee acted with substantial certainty that injury to its employee would occur" (Appx. 25, at ¶84). The Court nevertheless

declared that it "must analyze appellant's claim under the common-law test for employer intentional tort set out in *Fyffe* [*v. Jeno's, Inc.* (1991), 59 Ohio St.3d 115]," and concluded that the evidence created material fact issues under that standard. (Appx. 17-25, at ¶50-84).

III. ARGUMENT

Proposition of Law No. 1

> **The *Galatis* stare decisis test must be applied with flexibility in constitutional adjudication. Since it is generally beyond the power of the General Assembly to correct judicial interpretations of the Constitution, an erroneous constitutional determination may be revisited where it is demonstrably wrong. (*City of Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d 1, followed.)**

The premise of the doctrine of stare decisis is that "[w]ell reasoned opinions become controlling precedent, thus creating stability and predictability in our legal system." *Westfield Insurance Co. v. Galatis* (2003), 100 Ohio St.3d 216, ¶1. Conversely (as the *Galatis* decision illustrates), clearly erroneous decisions that become controlling precedent can cause confusion and instability in our legal system. The challenge lies in distinguishing decisions that are merely erroneous from those that harm Ohio jurisprudence.

Galatis formulated a three-pronged test for overruling precedent that balances the "cost" to predictability against the "benefit" of correct jurisprudence. Under that test, a prior decision of the Ohio Supreme Court will not be overruled unless: 1) the prior decision was wrongly decided or changed circumstances justify its abandonment; 2) the

prior decision defies practical workability; and 3) abandoning the precedent will not create an undue hardship for those who have relied upon it. *Galatis* at ¶47-48.

Galatis reversed and limited two prior cases interpreting "you" in UM contracts. While this Court has subsequently applied the *Galatis* test to overturn prior interpretations of the Ohio Revised Code[3] and the Ohio Administrative Code,[4] it has yet to squarely address the application of *Galatis* to prior interpretations of the Ohio Constitution.

A. The Doctrine of Stare Decisis Is Appropriately Applied with Greater Flexibility in Constitutional Adjudication.

Decisions of this Court, numerous decisions of the U.S. Supreme Court, and scholarly treatises, all recognize that stare decisis should be applied more flexibly to a court's *constitutional* precedent. See, e.g., *City of Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d 1, 10 (stare decisis is not "inflexibly applicable to constitutional interpretation"); *Seminole Tribe of Florida v. Florida* (1996), 517 U.S. 44, 63 ("our willingness to reconsider our earlier decisions has been 'particularly true in constitutional cases'" (citation omitted)); 1 Tribe, American Constitutional Law (2000), 84-85, §1-6 ("the standard learning has long been that *constitutional* determinations that

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[3] See, e.g., *State ex rel. Stevens v. Indus. Comm.* (2006), 110 Ohio St.3d 32 (overruling prior interpretation of "special circumstance" in R.C. 4123.61).

[4] See, e.g., *State ex rel. Advanced Metal Precision Prods. v. Indus. Comm.* (2006), 111 Ohio St.3d 109 (overruling prior interpretations of "operating cycle" as used in former Ohio Adm. Code 4121:1-5-11(E)).

the Supreme Court believes to be seriously mistaken ought to be much easier to overturn than would be the case with a mere *statutory* interpretation" (emphasis in original)).

As early as 1902, this Court held that "we do not feel bound" by prior decisions "lacking essential soundness; and this is especially so when constitutional limitations are involved." See *State ex rel Guilbert v. Yates* (1902), 66 Ohio St. 546, 548-549:

> No amount of wrong adjudication can justify a practical abrogation of the Constitution. We may well pause and consider carefully when we find our views to be in conflict with those entertained by our predecessors; but, if it be found that the conflict is honestly irreconcilable, there is but one course to take, and that is to follow our own convictions. The obligation of a judge is that he will support the Constitution * * * according to the best of his ability and understanding, and not according to the authority and understanding of some other person or persons, however great or however numerous.

A year later, *State ex rel. Guilbert v. Lewis* (1903), 69 Ohio St. 202, set forth syllabus law clarifying that the doctrine of stare decisis prevents the overruling of a prior constitutional decision only when property or other vested rights are at stake:

> The doctrine of stare decisis will not be allowed to interfere with the overruling of a former decision upon a constitutional question, when such former decision is clearly erroneous, and it does not appear that such decision has been acted upon as a rule of property, or that rights have vested under it, so that more injury would follow if it were overruled than if it were allowed to stand.

Id., paragraph two of the syllabus.

At issue in *Yates* and *Lewis* was whether county officers were "local," such that laws affecting their compensation did not conflict with the requirement of Section 26, Article II of the Ohio Constitution that "all laws of a general nature shall have a uniform operation throughout the State." In overturning a prior decision, *Lewis* explained that "the fundamental law of the Constitution" requires a different interpretation of stare decisis:

> [T]he integrity of the Constitution is of supreme importance in every free government, and every departure therefrom should be closely scrutinized and rigidly restrained. It cannot be tolerated that those whose duty it is to support the Constitution may subvert it by a construction, inadvertent or deliberately formed, which shall be forever after binding upon their successors and the people.

69 Ohio St. at 207. As further support, *Lewis* quotes extensively from "the recently decided case" of *Kimball v. City of Grantsville City* (Utah 1899), 57 P. 1. See *Lewis*, 69 Ohio St. at 207-208.

Kimball is particularly instructive in this case, because the prior decision at issue in *Kimball*, like the prior decision at issue here, placed an improper restraint on the "plenary" powers of the legislative branch. 57 P. at 4. After confirming that the legislature was accorded the "whole lawmaking power" (except "as is expressly or impliedly withheld by the state or federal constitution"), the *Kimball* court concluded that applying the doctrine of stare decisis to preserve decisions which erroneously refused to recognize that plenary power would, in itself, violate the doctrine of separation of powers:

> Would it not be an open violation of the [separation of powers] rule to declare that a decision, however erroneous, however opposed to legislative enactments or constitutional provision, is nevertheless conclusive evidence of the law, and that the courts make the law as well as define its application?

Id. at 8.

Jurisdictions across the nation continue to follow these fundamental principles of stare decisis today. For example, Michigan courts – which were the source of the stare decisis test adopted in *Galatis*[5] – also recognize the need for greater flexibility in constitutional adjudication:

> [A] judicial tribunal is most strongly justified in its reversal of precedent when adherence to such precedent would perpetuate a plainly incorrect interpretation of the language of a constitutional provision or statute.

Nawrocki v. Macomb County Road Comm. (Mich. 2000), 615 N.W. 2d. 702, 721 (citation omitted). Accord:

- *City of Parker v. State of Florida* (Fla. 2008), __ So.2d __, 33 Fla. L. Weekly S671, 2008 WL 4240235, at *12 (concurring op., internal punctuation omitted) ("[T]he rationale for stare decisis may be at its weakest when we interpret the Constitution because our interpretation can be altered only by constitutional amendment or by overruling our prior decisions");
- *Ex parte Duck Boo Internatl. Co., Ltd.* (Ala. 2007), 985 So.2d 900, 911 (citation omitted) ("the doctrine of stare decisis has a diminished efficacy in instances where the former decision is grounded in an erroneous application of the Constitution and corrective action is limited to constitutional amendment or overruling the earlier decision");

[5] See *Galatis*, 100 Ohio St.3d 216, ¶ 47.

- *Texas Assoc. of Business v. Texas Air Control Bd.* (Tex. 1993), 852 S.W.2d 440, 446 ("although our concern for the rule of stare decisis makes us hesitant to overrule any case, when constitutional principles are at issue this court as a practical matter is the only government institution with the power and duty to correct such errors");

- *In re Todd* (Ind. 1935), 193 N.E. 865, 866 (when the overruling of previous decisions does not involve a rule of property or a basis for contracts, stare decisis does not apply "[a]nd this especially true when a constitutional question is involved. * * * [A]nd we feel freer to re-examine this question in view of the strong dissenting opinions" in the prior cases).

As this uniform authority suggests, two primary reasons support a more flexible stare decisis test for overruling constitutional precedent. First, as the U.S. Supreme Court held in *Seminole Tribe*, while a legislature can "correct" any Supreme Court error in interpreting the terms of a statute, "[i]t is generally beyond the power of the legislature to change or 'correct' judicial interpretations of the Constitution." 517 U.S. at 63. Accord *Shay v. Shay* (2007), 113 Ohio St.3d 172, favorably quoting *Square D Co. v. Niagara Frontier Tariff Bur., Inc.* (1986), 476 U.S. 409, 424, in part, as follows (emphasis added, punctuation and additional citations omitted):

> Stare decisis is usually the wise policy because in most matters, it is more important that the applicable rule of law be settled than that it be settled right.
>
> * * *
>
> This is commonly true, even where the error is a matter of serious concern, ***provided correction can be had by legislation.***

When correction cannot be had by legislation, the balance shifts from "settled law" to "law settled right."

That common sense precaution directly applies to this case. In *Brady v. Safety Kleen Corp.* (1991), 61 Ohio St.3d 624, a plurality of Justices concluded that the General Assembly's first attempt to regulate workplace intentional torts was prohibited by both Sections 34 and 35, Article II, of the Ohio Constitution. The concurring opinion supplying the crucial fourth vote, however, confirmed that the General Assembly may "modify intentional tort law * * * in the exercise of its police power," and limited its concurrence to the "hybrid" nature of a statute that required a court to determine liability and the Industrial Commission to determine damages. Id. at 640-41 (Brown, J., concurring).

The General Assembly responded to *Brady* by enacting new legislation that placed liability *and* damages in the court system, as with any other common law action. *Johnson*, however, found no distinction between the statutes, and interpreted Sections 34 and 35, Article II, as prohibiting *any* legislation enacted for the purpose of "immunizing" employers from liability for intentional torts. It is beyond the power of the legislature to "correct" *Johnson*'s overly broad interpretation of the Ohio Constitution; only this Court may do so.

The second reason for additional flexibility is that the pragmatic concerns supporting the second and third prongs of the *Galatis* test have less relevance to constitutional interpretations. As a general rule, the tests developed for overturning precedent balance the "cost" of encroaching on stability with the "benefit" of correct jurisprudence. See *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992),

505 U.S. 833, 854 (O'Connor, Kennedy and Souter, JJ.) (stare decisis is comprised of "a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming or overruling a prior case"). Such pragmatic concerns have less force in constitutional adjudication because a justice's oath is to uphold the Constitution – not any particular interpretation of it. *City of Rocky River*, 43 Ohio St.3d at 6-7. When "pragmatic" considerations of policy collide with the text of a written Constitution, a powerful argument can be made that "a court has not merely the power, but the obligation, to prefer the Constitution." Lawson, The Constitutional Case Against Precedent (1994), 17 Harv. J.L. & Pub. Pol'y 23, 28.

B. Practical Workability and Reliance Must Be Viewed Through the Lens of Constitutional Adjudication.

The distinct concerns present in constitutional adjudication do not require this Court to adopt a new or modified rule of stare decisis; only that it apply the second and third prongs of the *Galatis* test within their proper context and with appropriate flexibility.

In constitutional adjudication, for example, "practical workability" may be promoted by "bright line" textual interpretations. But such interpretations must give way when a body of developed case law proves that the "bright line" is too broad. See, e.g., *Virginia State Board of Pharmacy v. Virginia Citizen's Consumer Counsel, Inc.* (1976), 425 U.S. 748 (overruling the U.S. Supreme Court's "bright line" precedent holding that "commercial speech" is not protected under the First Amendment); *Brandenburg v. Ohio*

(1969), 395 U.S. 444 (replacing the bright-line rule that advocating violence is not protected speech with the less precise "clear and present danger" test); and *Baker v. Carr* (1962), 369 U.S. 186 (overruling the Court's prior bright-line rule that legislative apportionment is non-justiciable).

"Defies practical workability" may also apply when a judicial interpretation of constitutional text has the effect of altering the delicate balance of powers among the three branches of government. See, e.g., *City of Parker v. State of Florida*, supra, __ So.2d __, 2008 WL 4240235, at *13 (Bell, J. concurring in part and dissenting in part). Applying a three-pronged test similar to *Galatis*, Justice Bell concludes that because experience proved that prior textual interpretations of Florida's Constitution had "vitiated a critical restraint on the power of local governments to incur long-term debt," the prior interpretation was "unworkable and unacceptable." Id. Similarly, the "legal fiction" that Sections 34 and 35, Article II of Ohio's Constitution prohibit legislative action in the realm of workplace intentional tort imposes a non-existent constraint on the plenary legislative powers of the General Assembly and is "unworkable and unacceptable."

"Reliance" also may have a different meaning in constitutional adjudication. In *Galatis*, the inquiry was whether abandoning precedent would create an undue hardship for those who had "relied" on, or had vested rights in, this Court's previous interpretations of "you" in UM coverage forms. That type of inquiry is particularly appropriate in cases involving property and contract rights. See *Payne v. Tennessee* (1991), 501 U.S. 808, 828, and cases cited therein; *Quill Corp. v. North Dakota* (1992),

504 U.S. 298, 320 (Scalia, J., concurring in part and dissenting in part) (in reviewing precedent involving contract and property rights, courts are particularly sensitive to "visit[ing] hardship upon those who took us at our word").

As the Michigan Supreme Court has recognized, however, reliance can have a wholly different meaning when the plain words of a statute or constitutional provision have been misconstrued by a state's highest court. See *Pohutsky v. City of Allen Park* (Mich. 2002), 641 N.W.2d. 219, 232 (when a court misinterprets plain text, "it is that court itself that has disrupted the reliance interest" by "confound[ing]" legitimate citizen expectations). It is well within this Court's duty and power to restore legitimate citizen expectations that the *empowering* language of Section 34, Article II of the Ohio Constitution does not *prohibit* legislation defining workplace intentional torts.

In short, although *Johnson* should not be accorded stare decisis effect under any interpretation of the doctrine (see pp. 26-29, infra), this case presents this Court with the opportunity to clarify, consistent with the uniform federal and state case law and this Court's own pre-*Galatis* authority, that the second and third prongs of the *Galatis* test are to be applied more flexibly to constitutional adjudication.

Proposition of Law No. 2

> **R.C. 2745.01 does not violate Section 34, Article II of the Ohio Constitution, or Section 35, Article II of the Ohio Constitution, and is therefore constitutional on its face.**

An understanding of the constitutional underpinnings of R.C. 2745.01 requires an understanding of the history of labor legislation before and after the adoption of Sections

34 and 35, Article II of the Ohio Constitution, and the development of the "substantial certainty" workplace tort. As in other areas of the law, context is crucial to interpreting the meaning of constitutional provisions. E.g., *State v. Carswell* (2007), 114 Ohio St.3d 210, at ¶6 ("The general rule as to the interpretation of constitutional amendments is that '[t]he body enacting the amendment will be presumed to have had in mind existing constitutional or statutory provisions and their judicial construction, touching the subject dealt with.'"), quoting *State ex rel. Lake Cty. Bd. of Commrs. v. Zupancic* (1991), 62 Ohio St.3d 297, 303 (Moyer, C.J., dissenting); see, also, *McFadden v. Cleveland State Univ.*, Slip Op. No. 2008-Ohio-4914, at ¶13-14 (interpreting Section 3(A), Article IV in light of its historical background).

A. Sections 34 and 35, Article II of the Constitution, were adopted to establish clear constitutional authority for labor legislation and to restrict the courts' power to inhibit it.

1. Labor legislation at the turn of the 20th century faced judicial hostility.

"The origins of the [current workers' compensation system] date from 1911, when the General Assembly enacted Ohio's first comprehensive law pertaining to compensation for industrial injuries." *Arrington v. DaimlerChrysler Corp.* (2006), 109 Ohio St.3d 539, at ¶14. Ohio's original workers' compensation scheme was voluntary and insulated participating employers from tort liability, subject to a statutory exception for: 1) "willful acts" by an employer that injure an employee; and 2) "the failure of such employer * * * to comply with any municipal ordinance or lawful order of any duly authorized officer, or an statute for the protection of the life or safety of employees." See

G.C. 1465-61 (S.B. No. 127, 102 Ohio Laws 524, 529). This exception came to be known as an employer's "open liability" for tort claims.[6]

This Court held that Ohio's voluntary workers' compensation scheme was a valid exercise of the General Assembly's police power in *State ex rel. Yaple v. Creamer* (1912), 85 Ohio St. 349. *Creamer* was decided in the middle of the "*Lochner* era."[7] 1 Tribe, American Constitutional Law (3d Ed.2000) 1344, Section 8-2; see, also *City of Rocky River*, 43 Ohio St.3d at 26 (Wright, J., dissenting). The *Lochner* era was characterized by a "conservative economic ideology and by its hostility toward labor regulation," and courts were "quite willing – certainly more willing than [they have] ever otherwise been – to scrutinize and invalidate the substance of economic regulations pursuant to the Due Process Clause." 1 Tribe, American Constitutional Law (3d Ed.2000) 1345, Section 8-2. Accordingly, *Creamer*'s rejection of a due process challenge to the constitutionality of Ohio's original workers' compensation scheme relied on the voluntariness of the scheme and its inapplicability to existing contracts. 85 Ohio St. at 398-400, 405; *City of Rocky River*, 43 Ohio St.3d at 33 (Wright, J., dissenting).

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[6] See *State ex rel. Goodyear Tire & Rubber Co. v. Tracey* (1990), 66 Ohio App.3d 71, 74; *Bevis v. Armco Steel Corp.* (1949), 86 Ohio App. 525, 528; *Mabley & Carew Co. v. Lee* (1934), 129 Ohio St. 69, 74-76; *Patten v. Aluminum Castings Co.* (1922), 105 Ohio St. 1, 12.

[7] *Lochner v. New York* (1905), 198 U.S. 45.

2. The Constitutional Convention of 1912 adopted Sections 34 and 35, Article II to curb judicial power.

Such *Lochner* era jurisprudence influenced the Constitutional Convention of 1912. See 1 Marshall, A History of The Courts and Lawyers of Ohio (1934) 170. "[T]he main purpose of the convention was to make all parts of the State government quickly and directly responsive to the wishes of the *electorate*." Id. at 151 (emphasis added). Consistent with this purpose, Sections 34 and 35, Article II of the Ohio Constitution (as well as other labor amendments) were adopted "to establish clear constitutional authority for labor legislation and to restrict the courts' power to inhibit it." Terzian, Ohio's Constitution: An Historical Perspective (2004), 51 Clev.St.L.Rev. 357, 382.

Section 34, Article II specified that "[l]aws *may be passed* fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, safety and general welfare of all employe[e]s; and no other provision of the constitution shall impair or limit this power." (Emphasis supplied.) Its immediate object was to provide the General Assembly with broad legislative authority to "provide relief for those workers suffering in 'sweatshop' industries and to override the constitutional proscription against interference with the right to contract." *City of Rocky River*, 43 Ohio St.3d at 28 (Wright, J., dissenting).

Likewise, Section 35, Article II supplied the General Assembly with broad authority to enact a compulsory workers' compensation scheme, specifying that "laws *may be passed* establishing a state fund to be created by compulsory contribution thereto by employers * * *." (Emphasis supplied.) Its immediate objects were: 1) to assure that

the General Assembly's pre-existing authority to enact workers' compensation laws was "secure" from *Lochner* era judicial hostility; and 2) to provide the General Assembly with additional flexibility to improve such laws:

> [Section 35, Article II] undertakes to write into the constitution of Ohio a constitutional provision making secure the workmen's compensation law passed by the last legislature, and declared constitutional by the Ohio supreme court by a vote of 4 to 2. Labor asks that this proposal be adopted, because we believe that by writing it into the constitution it will make it possible to continue this beneficial measure without any further fear of a constitutional question being raised again on this matter. It will also give an opportunity to still further improve the law to meet modern conditions of employment as they may arise.

2 Proceedings and Debates of the Constitutional Convention of the State of Ohio (1913) 1346.

In addition to insulating Ohio's workers' compensation scheme from further constitutional challenge, Section 35 also provided that "no right of action shall be taken away from any employe[e] when the injury, disease or death arises from failure of the employer to comply with any lawful requirement for the protection of the lives, health and safety of employe[e]s." Former Section 35, Article II, Ohio Constitution, reprinted in 2 Proceedings and Debates of the Constitutional Convention of the State of Ohio (1913) 2104. That exemption preserved existing employer "open liability" for "willful acts," as well as employer "open liability" for violations of other "lawful requirements" specified in Ohio's workers' compensation scheme. See *Vayto v. River T. & Ry.* (C.P.

1915), 18 Ohio N.P. (N.S.) 305, 314; 2 Proceedings and Debates of the Constitutional Convention of the State of Ohio (1913) 1346.

3. Expansive judicial interpretations of employer "open liability" led to a constitutional amendment to make workers' compensation the "exclusive" remedy for workplace injuries.

Following the adoption of Section 35, Article II, the General Assembly continued to exercise its power to legislate an employer's "open liability" – its power to define that liability was unquestioned.

First, the General Assembly enacted G.C. 1465-76 as part of Ohio's first compulsory workers' compensation scheme – confirming that an employee could still file a civil lawsuit where (among other things) the "injury has arisen from the willful act of such employer[.]" G.C. 1465-76 (Am.S.B. No. 48, 1913 Ohio Laws 72, 84); see, also, *Fassig v. State ex rel. Turner* (1917), 95 Ohio St. 232, at paragraph one of syllabus.

Thereafter, in response to an expansive judicial construction of the phrase "willful acts," the General Assembly defined that term in 1914 to mean "an act done knowingly and purposely with the direct object of injuring another." G.C. 1465-76 (S.B. No. 28, 1914 Ohio Laws 193, 194); see, also, *Vayto*, 18 Ohio N.P. (N.S.) at 315.

In the five years following legislative action to *narrow* the definition of "willful acts," this Court issued three controversial and deeply divided decisions that ultimately expanded an employer's "open liability" to actions approximating mere negligence. See *American Woodenware Mfg. Co. v. Schorling* (1917), 96 Ohio St. 305; *Patten v.*

Aluminum Castings Co. (1922), 105 Ohio St. 1; *Ohio Automatic Sprinkler Co. v. Fender* (1923), 108 Ohio St. 149.

In response, the General Assembly again acted, adopting a Joint Resolution in 1923 that proposed an amendment to Section 35, Article II of the Ohio Constitution. The proposed amendment abolished an employer's "open liability," specifying that a workers' compensation award "*shall be in lieu of all other rights to compensation,* or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries, or occupational disease." Joint Resolution No. 40, 1923 Ohio Laws 631 (emphasis added). Consistent with this language, Ohio citizens were instructed that a vote in favor of the amendment would (among other things) "abolish[] open liability of employers[.]" Id. at 632. And after Ohio's citizens adopted the 1923 constitutional amendment to Section 35, Article II, this Court confirmed that the effect of that amendment was to abolish court jurisdiction over claims for damages against complying employers. *State ex rel. Engle v. Indus. Comm.* (1944), 142 Ohio St. 425, 430-31.

B. Modern "Open Liability" Jurisprudence and the Legislative Response.

The amendments abolishing employer open liability remain the same today as when approved by the electorate in 1923. Nevertheless, this Court resurrected employer liability for tort claims in the 1980s and 90s. In a series of opinions that did not analyze

either the purpose or history of the 1923 amendment to Section 35, Article II,[8] this Court determined: 1) that Section 35, Article II does not bar employees from asserting common law intentional tort claims against their employer; 2) that an employer's intentional tort liability includes not only direct intent torts, but also acts committed with a belief that injury is "substantially certain to occur"; 3) that the receipt of workers' compensation benefits does not bar a subsequent intentional tort claim; and 4) that an employer cannot setoff the employee's workers' compensation benefits against any intentional tort damages awarded to the employee. *Blankenship v. Cincinnati Milacron Chemicals, Inc.* (1982), 69 Ohio St.2d 608; *Jones v. VIP Development Co.* (1984), 15 Ohio St.3d 90; *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100; *Fyffe v. Jeno's, Inc.* (1991), 59 Ohio St.3d 115. See, also, Note, Ohio's "Employment Intentional Tort": A Workers' Compensation Exception or the Creation of an Entirely New Cause of Action? (1996), 44 Clev.St.L.Rev. 381, 391-99 (discussing Ohio's evolving intentional tort liability standard).

The judicial definition of "intent," as modified by *Fyffe*, mirrored the "intent" standard adopted by this Court in the insurance context. See *Harasyn v. Normandy Metals, Inc.* (1990), 49 Ohio St.3d 173, 175 (direct intent is implicated in cases "where

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[8] Instead, as explained by one Justice, the new "open liability" was based on the premise that "an injury *intentionally* inflicted on an employee may be received in the course of employment, but such an injury *never* arises out of the employment. Thus, the [immunity] protections afforded by the [workers' compensation] Act do not apply." *Taylor v. Academy Iron & Metal Co.* (1988), 36 Ohio St.3d 149, 159 (Douglas, J. dissenting, emphasis in original), overruled, *Conley v. Brown Corp. of Waverly* (1998), 82 Ohio St.3d 470.

the actor does something which brings about the exact result desired"; substantial certainty is implicated in cases where "the actor does something that he believes is substantially certain to cause a particular result, even if the actor does not desire that result"); *Gearing v. Nationwide Ins. Co.* (1996), 76 Ohio St.3d 34, 36-37, 39-40 (clarifying substantial certainty jurisprudence by explaining that certain acts inherently cause harm – whether or not harm was subjectively intended – and that, in such cases, an intent to cause harm could be inferred from the act itself).

In 1986, with considerable bipartisan support, the General Assembly enacted former R.C. 4121.80 to regulate the new "open liability" this Court created. See *Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St.3d 624, 646 (Holmes, J., dissenting). Former R.C. 4121.80(G)(1) defined an employer's liability for "substantial certainty" torts in language identical to current R.C. 2745.01, stating that "'[s]ubstantially certain' means that an employer acts with the deliberate intent to cause an employee to suffer injury, disease, condition or death." 61 Ohio St.3d at 627 n. 1. But unlike current R.C. 2745.01, former R.C. 4121.80 sought to remove that liability from the court system. Former R.C. 4121.80 created a compulsory intentional tort fund and a hybrid system that permitted a court (but not a jury) to determine liability for intentional tort claims, while vesting the Industrial Commission with original jurisdiction over the amount of an award for such a claim. 61 Ohio St.3d at 628 n.1, quoting former R.C. 4121.80(D)-(E).

Brady held former R.C. 4121.80 unconstitutional. None of the opinions in *Brady* addressed the General Assembly's definition of "substantial certainty." Instead, a plurality of this Court determined that while former R.C. 4121.80 was "totally repugnant" to Section 34, Article II of the Ohio Constitution, it "encounters even more constitutional problems" under Section 35, Article II. Id. at 633. The legislation could not withstand constitutional scrutiny under Section 35 because: 1) its hybrid system purported to transfer jurisdiction over intentional tort awards to the Industrial Commission; 2) intentional tort awards were not subject to Section 35, Article II; and 3) the "General Assembly has no power to confer jurisdiction on the commission except as authorized by that constitutional provision." 61 Ohio St.3d at 634 (internal quotation omitted). Justice Brown's decisive concurring opinion detected "a gap" in the plurality's analysis, and confirmed that the General Assembly may "modify intentional tort law * * * in the exercise of its police power." Id. at 640 (Brown, J., concurring). But Justice Brown also concluded that the hybrid system created by former R.C. 4121.80 was unconstitutional on the grounds that it violated the employee's right to a jury trial by requiring the court to determine liability and the Industrial Commission to determine damages. Id. at 640-41.

When the General Assembly enacted former R.C. 2745.01, it responded to *Brady* by regulating an employer's "open liability" for intentional tort claims within the court system without attempting to transfer jurisdiction over any aspect of those claims. See *Johnson*, 85 Ohio St. 3d at 301 n.1 (quoting former R.C. 2745.01). Nevertheless, a 4-3 majority of this Court declared former R.C. 2745.01 unconstitutional in its entirety. The

Johnson majority accords *Brady*'s brief reference to Section 34 as having precedential stature equal to *Brady*'s analysis of Section 35, and asserts that "the constitutional impediments at issue in *Brady* * * * also apply with equal force to R.C. 2745.01," id. at 305. More specifically, *Johnson* concludes that: 1) former R.C. 2745.01 was not authorized by Section 34, Article II because it was "clearly not a law that furthers the '* * * comfort, health, safety and general welfare of all employees"; and 2) that former R.C. 2745.01 "cannot logically withstand constitutional scrutiny" under Section 35, Article II, "inasmuch as it attempts to regulate an area that is beyond the reach of constitutional empowerment." Id. at 308.

C. ***Johnson* Should Be Overruled.**

Johnson's holding that this Court's intentional tort jurisprudence is beyond the reach of the General Assembly's "constitutional empowerment" is severely flawed, represents an anomaly in this Court's constitutional and tort law jurisprudence, and should be overruled. First, *Johnson* ignored the constitutional significance of the fundamental change in legislative approach made by the General Assembly in response to *Brady*. Because former R.C. 2745.01 did not attempt to transfer jurisdiction over any portion of an intentional tort claim to the Industrial Commission, the premise of the *Brady* plurality's analysis – that the General Assembly has no power to confer jurisdiction on the commission except as authorized by Section 35, Article II – was irrelevant. *Brady* does not support *Johnson*'s holding.

Second, *Johnson* ignored the General Assembly's broad police powers, including its historic ability to define an employer's "open liability" for tort claims outside the workers' compensation system, even before such liability was constitutionally abolished. The history of employer "open liability" for workplace torts recounted above demonstrates, at a minimum, that whenever "open liability" has existed for workplace torts the General Assembly has had the power to define that liability. Moreover, since *Johnson* issued, members of this Court have reaffirmed the General Assembly's active role in the development of tort law. E.g., *Schirmer v. Mt. Auburn Obstetrics & Gynecologic Assoc., Inc.* (2006), 108 Ohio St.3d 494, at ¶46 (Moyer, C.J., concurring); *Arbino v. Johnson & Johnson* (2007), 116 Ohio St.3d 468, at ¶131 (Cupp, J., concurring). *Johnson* erroneously makes Ohio's employment intentional tort the sole claim that the General Assembly lacks the power to regulate.

Third, *Johnson* ignores the text and objects of Sections 34 and 35, Article II of the Ohio Constitution. Both sections are written as affirmative grants of authority to the General Assembly, and the history recounted above shows both sections were adopted for the very purpose of limiting the power of this Court to declare acts of the General Assembly unconstitutional. E.g., *Bickers v. Western & Southern Life Ins. Co.* (2007), 116 Ohio St.3d 351, at ¶24 ("For it is the legislature, and not the courts, to which the Ohio Constitution commits the determination of the policy compromises necessary to balance the obligations and rights of the employer and employee in the workers' compensation system").

Fourth, *Johnson*'s conclusion that Section 34, Article II places substantive limits on the General Assembly's authority to legislate is an aberration. It is inconsistent with this Court's opinion just six months later in *American Assn. of Univ. Professors v. Central State Univ.* (1999), 87 Ohio St.3d 55, 61, that Section 34 has always been construed as "a broad *grant* of authority to the General Assembly, not as a limitation on its power to enact legislation." (Emphasis in original.) Indeed, while various parties disagree as to the scope of the authority, all of the parties to the Freedom of Residency Act cases currently pending on this Court's docket agree that Section 34, Article II is an affirmative grant of authority to the General Assembly. E.g., *State v. Akron*, S.Ct. No. 2008-0418; *Lima v. State*, S.Ct. No. 2008-0128; *Toledo v. State*, S.Ct. No. 2008-0975.

Finally, *Johnson* is inconsistent with the doctrine of separation of powers. "A fundamental principle of the constitutional separation of powers among the three branches of government is that the legislative branch is 'the ultimate arbiter of public policy,'" and "has the power to continually create and refine the laws to meet the needs of the citizens of Ohio." *Arbino*, 116 Ohio St.3d 468, at ¶21. No other state provides a "substantial certainty" workplace tort and also permits an employee to receive a double-recovery.[9] The General Assembly – "the body best equipped" to hold "[a] full discussion

[9] E.g., *Medina v. Herrera* (Tex.1996), 927 S.W.2d 597 (receipt of workers' compensation award bars intentional tort claim); *Saporoso v. Aetna Life & Cas. Ins. Co.* (Conn.1992), 603 A.2d 1160 (same), overruled on other grounds, *Santopietro v. New Haven* (Conn.1996), 682 A.2d 106; *Chorak v. Naughton* (Fla.Dist.Ct.App.1982), 409 So.2d 35 (same); see, also, *Gagnard v. Baldridge* (La.1993), 612 So.2d 732, 736 (requiring a set-off in the amount of the workers' compensation award to prevent a double-recovery).

of the competing principles and controversial issues" relating to that tort – is the proper branch of government to determine whether Ohio should continue to permit such sweeping liability. See *Schirmer*, 108 Ohio St.3d 494, ¶84 (dissent, Lanzinger, J.); *Bickers*, 116 Ohio St.3d 351, at ¶24 (refusing to recognize public-policy tort for non-retaliatory discharge of workers' compensation claimant because "it would be inappropriate for the judiciary to presume the superiority of its policy preference and supplant the policy choice of the legislature").

D. R.C. 2745.01 Is Constitutional Whether or Not *Johnson* Is Overruled.

Regardless of whether *Johnson* is overruled, current R.C. 2745.01 should be declared constitutional because it is "sufficiently different from previous enactments to avoid the blanket application of stare decisis and to warrant a fresh review of [its] merits." *Groch*, 117 Ohio St.3d 192, at ¶147, quoting *Arbino*, 116 Ohio St.3d 468, at ¶24. In *Johnson*, this Court declared the cause of action codified by former R.C. 2745.01 "illusory" because that statute (among other things): 1) raised the burden of proof (at trial and at the summary judgment stage) to clear and convincing evidence; and 2) imposed a certification requirement on all filings related to intentional tort claims that put the signer at risk for sanctions. 85 Ohio St.3d at 306. Following *Johnson*, the General Assembly responded to this Court's concerns by eliminating the "clear and convincing" burden of proof and the certification requirement. See, generally, R.C. 2745.01. *Johnson*'s analysis of a materially different statute should be construed narrowly so as to apply only to the statute construed in that case.

The General Assembly's authority to regulate an employer's "open liability" for workplace torts is supported by the history of that liability and the plenary police power of the General Assembly under Ohio's Constitution. See Section 1, Article II, Ohio Constitution; *Bd. of Commrs. of Champaign Cty. v. Church* (1900), 62 Ohio St. 318, 344; Because the General Assembly's police power is plenary, Sections 34 and 35, Article II cannot render R.C. 2745.01 unconstitutional unless they place "specific and clear" limitations on the General Assembly's authority. *Church*, 62 Ohio St. at 344; *State ex rel. Jackman v. Cuyahoga Cty. Court of Common Pleas* (1967), 9 Ohio St.3d 159, 162. They do not.

Moreover, the substance of current R.C. 2745.01 does not contain the constitutional infirmity identified in *Brady* – there is no transfer of jurisdiction to the Industrial Commission. Instead, R.C. 2745.01 simply enacts a definition for "substantial certainty" torts first adopted on a bipartisan basis in 1986,[10] and creates a rebuttable presumption of intent for certain specified employer misconduct. (Appx. 81.) In the process, R.C. 2745.01 creates a liability standard that is at least commensurate with (if not more generous than) the law in most other jurisdictions and the prevailing federal common law standard. E.g., *Talik v. Federal Marine Terminals, Inc.* (2008), 17 Ohio St.3d 496, ¶32 ("[o]nly a specific, deliberate intent by the employer to injure an employee falls outside the provisions of" the Longshore and Harbor Workers' Compensation Act);

[10] Current R.C. 2745.01(B) defines "substantially certain" as those as acts taken "with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death," R.C. 2745.01(B).

6 Larson, Workers' Compensation Law (2008) 103-7 – 8, Section 103.3 ("the common-law liability of the employer cannot, under the almost unanimous rule, be stretched to include accidental injuries caused by the gross, wanton, willful, deliberate, intentional, reckless, culpable, or malicious negligence, breach of statute, or other misconduct of the employer short of a conscious and deliberate intent directed to the purpose of inflicting an injury").

In short, R.C. 2745.01 is an unexceptional exercise of the General Assembly's police power that is constitutional on its face.

Proposition of Law No. 3

> **An intermediate court of appeals has no authority to issue decisions resolving issues that are not part of any appealed order, and where the issues resolved were not raised in any assignment of error asserted by the appellant or set forth in any argument in the parties' briefs.**

A more concise iteration of the proposition of law accepted by this Court (above) is:

> **An intermediate court of appeals has no authority to resolve issues that have not yet been decided by the trial court.**

The Trial Court decisions appealed in this case determined that: 1) R.C. 2745.01 is constitutional; and 2) applying that governing law to the undisputed facts entitled Metal & Wire Products Company to judgment as a matter of law. (Appx. 31, 34.) The Seventh District Court of Appeals reversed the first ruling, and held that the common law *Fyffe* standard governed Kaminski's claims. (Id. 17.) But instead of remanding for

further proceedings under the "correct" rule of law, the Court of Appeals proceeded to consider whether Metal & Wire Products was entitled to summary judgment under the *Fyffe* standard. (Id. 17-25.) Because appellate jurisdiction is limited to correcting trial court error, the Court of Appeals exceeded its authority when it determined issues that were never reached by the Trial Court, and which were not ripe for trial court review.

The jurisdiction of courts of appeal is set forth in Article IV, Section 3(B)(2) of the Ohio Constitution:

> Courts of Appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district.

(Appx. at 40.) It is axiomatic that in exercising their constitutional authority, courts of appeal must limit their review to those errors presented in the appealed judgment or orders, and not "attempt to anticipate what future pleadings and proof may develop." 5 Ohio Jurisprudence 3d (1999) 151, Appellate Review, Section 425. Resolving issues not yet decided by the trial court is contrary to well-established law prohibiting courts from issuing decisions on abstract or premature questions. See *Fortner v. Thomas* (1970), 22 Ohio St. 13, 15:

> It has become settled judicial responsibility for courts to refrain from giving opinions on abstract propositions and to avoid the imposition by judgment of premature declarations or advice upon potential controversies.

Simply put, the authority of Ohio's appellate courts is limited to correcting error. That authority does not extend to addressing issues that were not adjudicated by the trial court

and were not ripe for adjudication before the trial court. *Egan v. National Distillers & Chem. Corp.* (1986), 25 Ohio St.3d 176.

The trial court in *Egan* entered summary judgment in favor of the defendant on the grounds that by seeking and receiving benefits from his self-insured employer, the plaintiff was "estopped" from asserting an "intentional" tort. The court of appeals reversed and this Court accepted jurisdiction. In its appeal to this Court, the defendant offered alternative propositions of law – one that was consistent with the trial court's conclusion, and a second seeking an alternative rule of law that self-insured employers could deduct the amount of workers' compensation benefits paid to employees who are awarded intentional tort damages against the employer for the same injury. 25 Ohio St.3d at 177. Limiting its decision to the issue resolved by the trial court, this Court held that the "setoff" question was premature:

> The controversy is not ripe. * * * The trial court simply did not reach or rule on the setoff issue as a question of damages was not before it.
>
> * * *
>
> [I]t is not a justiciable issue. Any opinion the court might express regarding such setoffs to damages not actually awarded would be purely advisory, and it is well-settled that this court will not indulge in advisory opinions.

Id. at 177-178. Accord *Fallang v. Hickey* (1988), 40 Ohio St.3d 106, 108-109 (rejecting argument that court of appeals had "erred" by limiting its inquiry to the basis for judgment of dismissal set forth by the trial court); *Gilbert v. WNIR 100 FM* (2001), 142 Ohio App.3d 725, 746 (citing *Egan* to decline addressing certain assignment of error;

because "the trial court has not passed upon the issue * * * the controversy raised in this assignment of error is not ripe"); *Nious v. Griffin Constr., Inc.*, 10th Dist. No. 03AP-980, 2004-Ohio-4103, ¶20 (limiting appellate review to the propriety of the trial court's grant of a directed verdict; "[a]s the trial court never made any rulings regarding jury instructions, this argument is not ripe for our review"); *Puritas Metal Prods., Inc. v. Cole*, 9th Dist. Nos. 07CA009255, 07CA009257, 07CA009259, 2008-Ohio-4653, at ¶21-23 (citing *Egan* to decline review of an issue that "the trial court has not yet determined").

In this case, Kaminski did not assign any "error" relating to the application of the *Fyffe* standard to the evidence of record in her appeal to the Seventh District. Nor could she, since the Trial Court never applied the common law *Fyffe* standard to the evidence of record. But notwithstanding the absence of any assigned error on the issue, and despite the well-established jurisdictional limitation described above, the Seventh District opined that "[s]ince R.C. 2745.01 is unconstitutional, we must analyze appellant's claim under the common-law test for employer intentional tort set out in *Fyffe*, supra, and stated above." (Appx. 17, at ¶50.) The only basis offered for this conclusion is the Court's reference to an argument in Metal & Wire's opposing brief "that the record supports summary judgment in its favor even if this court finds that R.C. 2745.01 is unconstitutional * * *." (Appx. 15, at ¶45.) The Court's reasoning mixes apples and oranges.

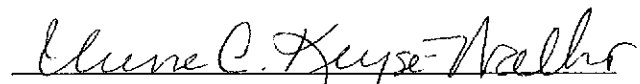
Metal & Wire's argument in its appellate brief follows this Court's rule of law "that a reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as the basis thereof." *Joyce v. Gen. Motors Corp.* (1990), 49 Ohio St.3d 93, 96. If the Trial Court's grant of summary judgment were "correct" under the *Fyffe* standard, there would be no "error" requiring reversal even if R.C. 2745.01 were unconstitutional. See, e.g., *State v. Ishmael* (1978), 54 Ohio St.2d 402 ("[A] reviewing court can only reverse a judgment of a trial court if it finds error in the proceedings of such court"). Here, the appellate court converted an argument presented as a "shield" for affirming a trial court judgment into a "sword" to preempt the trial court's resolution of issues in the first instance. The principle that an appellate court may *affirm* a *correct* judgment based on an alternative basis does not give an appellate court jurisdiction to *reverse* and rule in favor of the appealing party on an issue never adjudicated by the trial court.

Limiting appellate review to trial court error guards against the issuance of advisory opinions and avoids preempting the decision-making function of the trial courts. It further maintains the proper hierarchy of trial and appellate courts. This Court therefore should vacate the Court of Appeals' premature resolution of issues that were neither reached nor resolved by the Trial Court.

IV. CONCLUSION

For all of the above reasons, Metal & Wire Products Company respectfully requests that this Court reverse the judgment of the court of appeals and reinstate the Trial Court's order declaring R.C. 2745.01 constitutional and granting summary judgment in favor of Metal & Wire.

Respectfully submitted,



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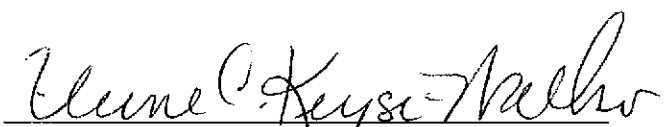

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No. 08-0857

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY, OHIO
CASE NO. 07-CO-15

ROSE KAMINSKI,
Plaintiff-Appellee,

v.

METAL & WIRE PRODUCTS COMPANY,
Defendant-Appellant.

NOTICE OF APPEAL OF APPELLANT METAL & WIRE PRODUCTS COMPANY

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NOTICE OF APPEAL OF APPELLANT METAL & WIRE PRODUCTS COMPANY

Appellant Metal & Wire Products Company hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Columbiana County Court of Appeals, Seventh Appellate District, journalized in Court of Appeals Case No. 07-CO-15 on March 18, 2008.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing **Notice of Appeal of Appellant Metal & Wire Products Company** has been served this 1st day of May, 2008, by U.S. Mail, postage prepaid, upon the following:

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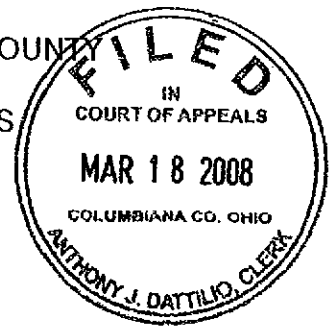
STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT



ROSE KIMINSKI,	)	
	)	
PLAINTIFF-APPELLANT,	)	
	)	
VS.	)	CASE NO. 07-CO-15
	)	
METAL & WIRE PRODUCTS COMPANY, ET AL.,	)	OPINION
	)	
	)	
DEFENDANTS-APPELLEES.	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Court of Common Pleas of Columbiana County, Ohio Case No. 2005CV884

JUDGMENT: Reversed and Remanded

APPEARANCES:

For Plaintiff-Appellant

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JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: March 18, 2008

DONOFRIO, J.

{¶1} Plaintiff-appellant, Rose Kaminski, appeals from a Columbiana County Common Pleas Court judgment granting summary judgment in favor of defendant-appellee, Metal & Wire Products Company.

{¶2} Appellant was employed as a press operator at appellee's Salem manufacturing facility. On June 30, 2005, appellant was working at her press when the press ran out of metal coil. She asked a co-worker, Toby Stivers, to operate the forklift to load a new coil into her press. Using the forklift, Stivers retrieved a metal coil and brought it to appellant's area. The coil was approximately 800-pounds, two-to-three inches thick, and four-to-five-feet tall. In order to load the coil onto the press, Stivers had to switch the coil from the right fork of the forklift to the left fork. Using the forklift, Stivers set the coil upright on the ground to facilitate the transfer. Because the coil needed to be balanced and because the supervisor could not be found, appellant balanced the unstable coil while Stivers attempted to thread the left fork through the coil. The fork bumped the coil. The coil fell onto appellant's legs and feet causing serious injury.

{¶3} Appellant subsequently filed a complaint against appellee. She alleged that appellee acted with the intent to cause injury to its employee by requiring her to participate in the performance of a dangerous activity without proper safety systems in violation of R.C. 2745.01. As part of her complaint, appellant asserted that R.C. 2745.01 is unconstitutional. R.C. 2745.01 provides the requirements for employer intentional tort. Appellant further asserted a claim against appellee for common law employment intentional tort.

{¶4} Appellee filed a counterclaim for a declaratory judgment that R.C. 2745.01 is constitutional. While appellant did not serve the Ohio Attorney General with her complaint alleging that R.C. 2745.01 is unconstitutional, appellee did serve the Attorney General with a copy of its counterclaim.

{¶5} Next, appellee filed a motion for summary judgment on its counterclaim asking the court to find that R.C. 2745.01 is constitutional. Appellant then filed a

cross motion for summary judgment on the counterclaim asking the court to find that R.C. 2745.01 is unconstitutional.

{¶6} The trial court found the statute to be constitutional. It reasoned that it was required to afford the statute a presumption of constitutionality and that it could not find the statute to be clearly unconstitutional.

{¶7} After the trial court's ruling that R.C. 2745.01 is constitutional, appellee moved for summary judgment on appellant's complaint. Appellee alleged that appellant could point to no evidence that it had an intent to injure her nor could she point to any evidence that it acted with the belief that injury was likely to occur. The trial court agreed with appellee and granted summary judgment in its favor.

{¶8} Appellant filed a timely notice of appeal on May 9, 2007.

{¶9} Appellant raises two assignments of error, the first of which states:

{¶10} "THE TRIAL COURT ERRED IN DECLARING R.C. § 2745.01 TO BE CONSTITUTIONAL."

{¶11} The latest version of R.C. 2745.01 became effective on April 7, 2005. It provides in pertinent part:

{¶12} "(A) In an action brought against an employer by an employee, * * * for damages resulting from an intentional tort committed by the employer during the course of employment, the employer shall not be liable unless the plaintiff proves that the employer committed the tortious act with the intent to injure another or with the belief that the injury was substantially certain to occur.

{¶13} "(B) As used in this section, 'substantially certain' means that an employer acts with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death."

{¶14} Thus, R.C. 2745.01 codifies the common law employer intentional tort and makes its remedy an employee's sole recourse for an employer intentional tort.

{¶15} Prior to the current version of R.C. 2745.01, the legislature has previously attempted to codify the common law employer intentional tort. In 1986,

the General Assembly enacted former R.C. 4121.80.[1] Under former R.C. 4121.80 injuries resulting from employer intentional tort fell under the realm of workers' compensation and allowed the injured employee to seek excess damages. It was intended to govern actions alleging intentional torts committed by employers against their employees. *Kunkler v. Goodyear Tire & Rubber Co.* (1988), 36 Ohio St.3d 135, 136, 522 N.E.2d 477. The legislature enacted former R.C. 4121.80 in response to the Ohio Supreme Court's decisions allowing employees to assert actions in common law against employers for intentional torts. See *Blankenship v. Cincinnati Milacron Chemicals, Inc.* (1982), 69 Ohio St.2d 608, 433 N.E.2d 572, and *Jones v. VIP Development Co.* (1984), 15 Ohio St.3d 90, 472 N.E.2d 1046. However, the Ohio Supreme Court found former R.C. 4121.80 unconstitutional because it exceeded and conflicted with the legislative authority granted to the General Assembly. *Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St.3d 624, 576 N.E.2d 722, at paragraph two of the syllabus.

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[1] **{¶a}** Former R.C. 4121.80 provided in part:

{¶b} "(A) If injury, occupational disease, or death results to any employee from the intentional tort of his employer, the employee or the dependents of a deceased employee have the right to receive workers' compensation benefits under Chapter 4123. of the Revised Code and have a cause of action against the employer for an excess of damages over the amount received or receivable under Chapter 4123. of the Revised Code and Section 35 of Article II, Ohio Constitution, or any benefit or amount, the cost of which has been provided or wholly paid for by the employer.

{¶c} "* * *

{¶d} "(G) As used in this section:

{¶e} "(1) 'Intentional tort' is an act committed with the intent to injure another or committed with the belief that the injury is substantially certain to occur.

{¶f} "Deliberate removal by the employer of an equipment safety guard or deliberate misrepresentation of a toxic or hazardous substance is evidence, the presumption of which may be rebutted, of an action committed with the intent to injure another if injury or an occupational disease or condition occurs as a direct result.

{¶g} " 'Substantially certain' means that an employer acts with deliberate intent to cause an employee to suffer injury, disease, condition, or death."

{¶16} Subsequently, the General Assembly enacted R.C. 2745.01.[2] The Ohio Supreme Court then found this statute to be unconstitutional. *Johnson v. BP Chemicals, Inc.* (1999), 85 Ohio St.3d 298, 308, 707 N.E.2d 1107. It reasoned that "[b]ecause R.C. 2745.01 imposes excessive standards (deliberate and intentional act), with a heightened burden of proof (clear and convincing evidence), it is clearly not 'a law that furthers the "* * * comfort, health, safety and general welfare of all employe[e]s."'" Id.

{¶17} Consequently, the General Assembly amended R.C. 2745.01. Appellant now alleges that this current version of R.C. 2745.01 is unconstitutional.

{¶18} All legislative enactments enjoy a presumption of constitutionality. *State v. Anderson* (1991), 57 Ohio St.3d 168, 171, 566 N.E.2d 1224, *Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375, 377, 402 N.E.2d 519. Furthermore, courts must apply all presumptions and pertinent rules of construction to uphold, if at all possible, a statute alleged to be unconstitutional. *State v. Sinito* (1975), 43 Ohio St.2d 98, 101, 330 N.E.2d 896. Thus, we must begin our analysis with the presumption that R.C. 2745.01 is constitutional.

{¶19} Appellant specifically takes issue with the phrase "substantially certain" and its application in the statute. The statute defines "substantially certain" as acting with "deliberate intent to cause an employee to suffer an injury, a disease, a

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[2] As stated by the Ohio Supreme Court in *Johnson v. BP Chemicals, Inc.* (1999), 85 Ohio St.3d 298, 306, 707 N.E.2d 1107: "R.C. 2745.01(A) provides that an employer is not generally subject to liability for damages at common law or by statute for an intentional tort that occurs during the course of employment, but that an employer is subject to liability only for an 'employment intentional tort' as defined. 'Employment intentional tort' is defined in R.C. 2745.01(D)(1) as 'an act committed by an employer in which the employer *deliberately and intentionally* injures, causes an occupational disease of, or causes the death of an employee.' (Emphasis added.) Further, R.C. 2745.01(B) states that employees or the dependent survivors of deceased employees who allege an intentional tort must demonstrate 'by *clear and convincing* evidence that the employer deliberately committed all of the elements of an employment intentional tort.' (Emphasis added.) This standard of clear and convincing evidence also applies to a response by the employee or the employee's representative to an employer's motion for summary judgment. R.C. 2745.01(C)(1). In addition, the statute requires that 'every pleading, motion, or other paper' be signed by the attorney of record or, if the party is not represented by an attorney, by the party. R.C. 2745.01(C)(2). And, if the requirements of R.C. 2745.01(C)(2) are not complied with, the court shall impose 'an appropriate sanction.' Id. The sanction may include, but is not limited to, reasonable expenses incurred by the other party, including reasonable attorney fees. Id."

condition, or death." Appellant argues that the Ohio Supreme Court has rejected such a definition.

{¶20} Appellant is correct. The Ohio Supreme Court has rejected a similar definition of "substantially certain." See *Jones*, 15 Ohio St.3d at 95. However, the legislature can change the common law by legislation as long as it acts within constitutional limitations. *Johnson*, 85 Ohio St.3d at 303. Thus, the fact that the Supreme Court has previously rejected a similar definition of substantial certainty is not a reason, in and of itself, to find R.C. 2745. 01 unconstitutional.

{¶21} Appellant next argues that R.C. 2745.01 conflicts with and exceeds the legislative authority granted to the General Assembly pursuant to Sections 34 and 35, Article II of the Ohio Constitution. She asserts that the Ohio Supreme Court has repeatedly held that the General Assembly does not have the power under Sections 34 and 35 to codify the common law employer intentional tort because it necessarily occurs outside of the employment relationship and does not further the comfort, health, safety, and general welfare of employees.

{¶22} Section 34, Article II of the Ohio Constitution provides: "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power." Section 35, Article II provides the General Assembly with the power to pass laws establishing a state workers' compensation fund "[f]or the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment."

{¶23} In *Brady*, 61 Ohio St.3d at paragraph two of the syllabus, the Ohio Supreme Court held that R.C. 2745.01's predecessor, former R.C. 4121.80, exceeded and conflicted with the legislative authority granted to the General Assembly pursuant to Sections 34 and 35, Article II of the Ohio Constitution and was unconstitutional. However, the Court's reasoning on the subject was only a plurality decision. In determining that former R.C. 4121.80 violated Section 34, Justice

Sweeney writing for the plurality reasoned that "[a] legislative enactment that attempts to remove a right to a remedy under common law that would otherwise benefit the employee cannot be held to be a law that furthers the ' * * * comfort, health, safety and general welfare of all employe[e]s * * *.'" Id. at 633. (Justices Douglas and Resnick concurring). In finding that the statute violated Section 35, Justice Sweeney wrote that former R.C. 4121.80 attempted to circumvent the purposes of Section 35 and "that the legislature cannot, consistent with Section 35, Article II, enact legislation governing intentional torts that occur within the employment relationship, because such intentional tortious conduct will always take place outside that relationship." Id. at 634.

{¶24} Later when dealing with the constitutionality of the prior version of R.C. 2745.01, the Ohio Supreme Court relied on the plurality's reasoning in *Brady*. The Court stressed that *any* statute the General Assembly enacted that limited employers' liability for their intentional tortious acts would violate the Ohio Constitution:

{¶25} "In *Brady*, the court invalidated former R.C. 4121.80 in its entirety, and, in doing so, we thought that we had made it abundantly clear that *any statute created to provide employers with immunity from liability for their intentional tortious conduct cannot withstand constitutional scrutiny*. See, also, *State ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St.3d 225, 230, 631 N.E.2d 582, 587. Notwithstanding, the General Assembly has enacted R.C. 2745.01, and, again, seeks to cloak employers with immunity. In this regard, we can only assume that the General Assembly has either failed to grasp the import of our holdings in *Brady* or that the General Assembly has simply elected to willfully disregard that decision. In any event, we will state again our holdings in *Brady* and hopefully put to rest any confusion that seems to exist with the General Assembly in this area." (Emphasis added.) *Johnson*, 85 Ohio St.3d at 304.

{¶26} The *Johnson* Court reasoned that "the constitutional impediments at issue in *Brady*, concerning former R.C. 4121.80, also apply with equal force to R.C.

2745.01" because "[b]oth statutes were enacted to serve identical purposes," that being "to provide immunity for employers from civil liability for employee injuries, disease, or death caused by the intentional tortious conduct of employers in the workplace." Id. at 305.

{¶27} The *Johnson* Court further explained that given the standard of proof required by the statute that the employer's conduct was both deliberate and intentional, the employee would have to prove, at a minimum, that the employer was guilty of criminal assault. Id. at 306. The Court found that by setting such a standard, "the General Assembly has created a cause of action that is simply illusory." Id.

{¶28} Given the Court's past holdings regarding R.C. 2745.01's predecessors, it is reasonable to conclude that the General Assembly's latest attempt at codifying employer intentional tort is unconstitutional as well. The Ohio Supreme Court has made it abundantly clear that any statute that codifies the common law employer intentional tort and attempts to limit employers' liability for such intentional torts is unconstitutional under both Section 34 and 35, Article II of the Ohio Constitution.

{¶29} R.C. 2745.01, as currently written, is similar to the earlier version found by the *Johnson* Court to be unconstitutional. R.C. 2745.01(A) provides that in an employer intentional tort action, the employee must prove "that the employer committed the tortious act *with the intent to injure another or with the belief that the injury was substantially certain to occur.*" Thus, pursuant to section A, in order to succeed on the claim, the employee must prove one of two things: (1) the employer acted with intent to injure or (2) the employer acted with the belief that injury was substantially certain to occur. This leads one to believe that there are two alternate ways for an employee to succeed on an intentional tort claim against an employer. However, we must consider the rest of the statute.

{¶30} "Intent to injure" is clear and, therefore is not defined in the statute. "Substantially certain," however, is not as clear. Therefore, the legislature provided a

definition. R.C. 2745.01(B) defines substantially certain as, acting "with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death."

{¶31} When we consider the definition of "substantial certainty" it becomes apparent that an employee does not have two ways to prove an intentional tort claim as R.C. 2745.01(A) suggests. The employee's two options of proof become: (1) the employer acted with intent to injure or (2) the employer acted with deliberate intent to injure. Thus, under R.C. 2745.01, the only way an employee can recover is if the employer acted with the intent to cause injury. The *Johnson* Court held that this type of action was simply illusory:

{¶32} "Under the definitional requirements contained in the statute, an employer's conduct, in order to create civil liability, must be both *deliberate* and *intentional*. Therefore, in order to prove an intentional tort * * * the employee, or his or her survivors, must prove, at a minimum, that the actions of the employer amount to criminal assault. In fact, given the elements imposed by the statute, it is even conceivable that an employer might actually be guilty of a criminal assault but exempt from civil liability under [former] R.C. 2745.01(D)(1)." *Johnson*, 85 Ohio St. at 306-307.

{¶33} Furthermore, the Ohio Supreme Court has explicitly held that a specific intent to injure is *not* necessary to a finding of intentional misconduct. *Jones*, 15 Ohio St.3d at 95.

{¶34} Pursuant to the Ohio Supreme Court's holdings in *Brady*, supra, and *Johnson*, supra, and consistent with Sections 34 and 35, Article II of the Ohio Constitution, we must conclude R.C. 2745.01 is unconstitutional. Because of its excessive standard of requiring proof that the employer intended to cause injury, "it is clearly not 'a law that furthers the "* * * comfort, health, safety and general welfare of all employe[e]s."'" *Johnson*, 85 Ohio St.3d at 308, quoting *Brady*, 61 Ohio St.3d at 633, quoting Section 34, Article II of the Ohio Constitution. Additionally, "because R.C. 2745.01 is an attempt by the General Assembly to govern intentional torts that occur within the employment relationship, R.C. 2745.01 'cannot logically withstand

constitutional scrutiny, inasmuch as it attempts to regulate an area that is beyond the reach of constitutional empowerment.'" Id., quoting *Brady*, 61 Ohio St.3d at 634.

{¶35} Appellant next argues that we must apply the principle of stare decisis in this situation. She asserts that the applications of employer intentional tort cannot be in a constant state of flux. Appellant contends that by holding R.C. 2745.01 unconstitutional, we will be applying and upholding the Ohio Supreme Court's past decisions on the matter.

{¶36} As stated above, we began this analysis with the presumption that R.C. 2745.01 is constitutional. However, by interpreting and applying the Ohio Supreme Court's past holdings dealing with similar statutes and the Ohio Constitution, we must reach the conclusion that R.C. 2745.01 is unconstitutional.

{¶37} Finally, appellant argues that R.C. 2745.01 violates the due process clause found in Article I, Section 16 of the Ohio Constitution. She contends that R.C. 2745.01 removes the right of injured employees to seek redress for the intentional torts of their employers. Therefore, appellant asserts, it does not bear a real and substantial relationship to the public health, safety, morals, or general welfare.

{¶38} Because R.C. 2745.01 is unconstitutional based on Sections 34 and 35, Article II of the Ohio Constitution, further analysis here is unnecessary. See *Johnson*, 85 Ohio St.3d at fn. 14 (It is unnecessary to elaborate on other constitutional issues given the Court's holding that R.C. 2745.01 exceeded the limits of legislative power under the Ohio Constitution.)

{¶39} Accordingly, appellant's first assignment of error has merit.

{¶40} Appellant's second assignment of error states:

{¶41} "THE TRIAL COURT ERRED IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT UNDER R.C. § 2745.01 AS GENUINE ISSUES OF MATERIAL FACT REMAIN TO BE LITIGATED."

{¶42} Here appellant argues that even if this court upholds R.C. 2745.01, summary judgment was improper because genuine issues of material fact are at issue.

{¶43} Appellant asserts that the evidence demonstrates that appellee was repeatedly warned of the inherent danger to its employees regarding its process of handling of the heavy metal coils. In fact, she states that appellee was fined by the Occupational Safety and Health Administration (OSHA) for a violation in connection with her injury. Despite its alleged knowledge of this known danger, appellant contends that appellee did not make any attempt to formally train its employees in how to properly load the coils onto the presses. She further asserts that appellee considered safer alternatives for loading the coils. However, it decided to use the more dangerous process on the basis of cost. This evidence, appellee argues, satisfies the requirement that appellee had the belief that an injury was substantially certain to occur. Furthermore, she contends that appellee's deliberate decision to subject its employees to a known danger despite its knowledge of a substantial certainty of injury rises to the level of deliberate intent to cause injury to an employee.

{¶44} Additionally, appellant argues that the trial court failed to consider the evidence in the light most favorable to her, the non-moving party, as it was required to do. She contends that the trial court relied on an undocumented and non-binding company policy of using a supervisor to load the coils into the press to characterize her assistance in loading the coil as voluntary and contrary to company policy. However, appellant argues the evidence demonstrated that any employee who passed a written forklift test, not just a supervisor, could operate the forklift in order to load a coil into a press. Thus, appellant contends that the company "policy" that the trial court relied on is "at best, a non-mandatory practice" utilized by appellee, which is often not possible to follow when a supervisor is not present on the plant floor, as was the case here.

{¶45} In response, appellee argues that the record supports summary judgment in its favor even if this court finds that R.C. 2745.01 is unconstitutional and we apply the common law test for employer intentional tort set out in *Fyffe v. Jeno's, Inc.* (1991), 59 Ohio St.3d 115, 570 N.E.2d 1108.

{¶46} In *Fyffe*, the Ohio Supreme Court set out the controlling test for employer intentional tort as follows:

{¶47} "[I]n order to establish 'intent' for the purpose of proving the existence of an intentional tort committed by an employer against his employee, the following must be demonstrated: (1) knowledge by the employer of the existence of a dangerous process, procedure, instrumentality or condition within its business operation; (2) knowledge by the employer that if the employee is subjected by his employment to such dangerous process, procedure, instrumentality or condition, then harm to the employee will be a substantial certainty; and (3) that the employer, under such circumstances, and with such knowledge, did act to require the employee to continue to perform the dangerous task. (*Van Fossen v. Babcock & Wilcox Co.* [1988], 36 Ohio St.3d 100, 522 N.E.2d 489, paragraph five of the syllabus, modified as set forth above and explained.)" Id. at paragraph one of the syllabus.

{¶48} Appellee argues that while there was some inherent danger in loading the coils, there was no evidence that it had knowledge that injury was substantially certain to occur or that it required appellant to perform the task of assisting with loading the coils. It points to appellant's deposition testimony where she admitted that she was supposed to find a supervisor to load the coil. (Kaminski depo. 35) Appellee argues that an employee who voluntarily undertakes a risk cannot maintain an employer intentional tort action. Additionally, appellee asserts that the set of circumstances that created the danger as perceived by appellant's expert were unique to this situation. (Girardi dep. 27-29) Finally, appellee contends that while handling coils is generally dangerous, it is simply an inherently dangerous part of the work, which danger can be avoided by paying attention and using reasonable care. (Bellinger dep. 69; Frederick dep. 64)

{¶49} In reviewing an award of summary judgment, appellate courts must apply a de novo standard of review. *Cole v. Am. Industries & Resources Corp.* (1998), 128 Ohio App.3d 546, 552, 715 N.E.2d 1179. Thus, we shall apply the same test as the trial court in determining whether summary judgment was proper. Civ.R.

56(C) provides that the trial court shall render summary judgment if no genuine issue of material fact exists and when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. *State ex rel. Parsons v. Flemming* (1994), 68 Ohio St.3d 509, 511, 628 N.E.2d 1377. A "material fact" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc.* (1995), 104 Ohio App.3d 598, 603, 662 N.E.2d 1088, citing *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 247-248, 106 S.Ct. 2505, 91 L.Ed.2d 202.

{¶50} Since R.C. 2745.01 is unconstitutional, we must analyze appellant's claim under the common-law test for employer intentional tort set out in *Fyffe*, supra, and stated above.

{¶51} There seems to be no dispute surrounding the facts preceding appellant's injury. Appellant was working the night shift, operating her press when it ran out of coil. She looked for her supervisor, David Bellinger, so that he could load another coil into her press. However, she was unable to find him. Appellant then asked a co-worker, Toby Stivers, to load the coil for her. She asked Stivers because he was licensed by appellee to operate the forklift, which was required to load the coil. Stivers had changed coils on his press many times. When Stivers brought the coil to appellant's press, he needed to switch the coil from one fork to the other fork to load it into the press. In order to do this, Stivers had to set the coil down. Someone had to balance the coil while Stivers switched it to the other fork. Appellant accepted this job. While appellant was balancing the coil, it fell onto her foot and leg.

{¶52} There also is no dispute that the metal coil appellant was attempting to balance was approximately 800 pounds, four-to-five feet tall, and only two-to-three inches thick. Thus, it was very unstable when stood upright.

{¶53} The issue that arises here is whether appellee required its employees to engage in this method of loading and balancing coils with the knowledge that this method was dangerous and with the knowledge that by requiring employees to use

this method, it was substantially certain that someone would be injured. Thus, we must determine whether appellant presented evidence going to each of the three *Fyffe* elements.

{¶54} First, appellant had to demonstrate that a genuine issue of material fact existed as to whether appellee possessed knowledge of a dangerous process or procedure within its business operations. In order to do so, appellant had to demonstrate that: (1) a dangerous condition existed within appellee's business operations and (2) that appellee had actual or constructive knowledge that the dangerous condition existed. *Moore v. Ohio Valley Coal Co.*, 7th Dist. No. 05-BE-3, 2007-Ohio-1123, at ¶26. Appellant met this element.

{¶55} Bellinger, appellant's supervisor, testified that he had seen coils similar to the one appellant was holding tip over while an employee was holding them. (Bellinger dep. 41). He stated that he witnessed this two or three times. (Bellinger dep. 41). However, on those occasions, the person holding the coil was able to get out of the way. (Bellinger dep. 41). Bellinger said they were lucky to get out of the way. (Bellinger dep. 67). He further stated that the narrow coils, like the one appellant was holding, were at risk of becoming unbalanced and created a dangerous condition when an employee was holding them. (Bellinger dep. 68). He considered the practice of balancing the narrow coils to be unsafe. (Bellinger dep. 43-44).

{¶56} Additionally, Bill Frederick, a former supervisor at appellee's plant, testified that on two or three occasions, coils that he was holding tipped over. (Frederick dep. 43). However, he stated that he was lucky enough to get out of the way. (Frederick dep. 43-44). He also witnessed coils falling while an employee was holding them two to three times a year. (Frederick dep. 44). And Frederick complained to his supervisors that appellee's method of loading coils was unsafe. (Frederick dep. 31, 34-37).

{¶57} In addition, OSHA issued a citation to appellee resulting from appellant's injury. The citation stated, "the load of steel coil being handled by a

forklift, was not properly stable, secured or safely arranged." (Girardi dep. Ex. A).

{¶58} This court has observed:

{¶59} "The mere fact that defendant's process involved the existence of dangers does not automatically classify defendant's acts or omissions as an intentional tort, even if management failed to take corrective actions or institute safety measures. *Shelton v. U.S. Steel. Corp.* (S.D.Ohio, 1989), 710 F.Supp. 206, 210. Some dangers may 'fairly be viewed as a fact of life of industrial employment' and an employer has not committed an intentional tort when an employee is injured by one of those dangers. *Van Fossen v. Babcock & Wilcox Co.* (1989), 36 Ohio St.3d 100, 116, 522 N.E.2d 489. A dangerous condition exists when the danger 'falls outside the "natural hazards of employment," which one assumes have been taken into consideration by employers when promulgating safety regulations and procedures.' *Youngbird v. Whirlpool Corp.* (1994), 99 Ohio App.3d 740, 747, 651 N.E.2d 1314." *Hubert v. Al Hissom Roofing and Constr.*, Inc., 7th Dist. No. 05-CO-21, 2006-Ohio-751, at ¶19.

{¶60} But here two supervisors testified that they had seen the large coils fall over when an employee was balancing them on more than one occasion. They both considered the employees who were balancing the coils at the time "lucky" to get out of the way. Bellinger stated that balancing a coil created a dangerous condition. And Frederick complained to his supervisors that appellee's method of loading the coils was unsafe. This evidence shows that appellee, through its supervisors, knew of the unsafe method used to balance the unsteady coils.

{¶61} This evidence also creates a genuine issue of material fact as to whether the method used to balance the coils was dangerous to the point of falling outside the natural hazards of employment. The Fourth District has noted that operating dangerous machinery may be a necessary incident of an employment situation, thus not permitting for an injured employee to recover in intentional tort for injuries suffered. *Goodin v. Columbia Gas of Ohio, Inc.* (2000), 141 Ohio App.3d 207, 216, 750 N.E.2d 1122. Yet operating the same dangerous machinery without

proper safety mechanisms in place may not constitute a necessary incident of the employment, thus permitting for recovery for intentional tort. Id. In the present case, changing the heavy, unstable coils was a necessary part of appellant's employment. However, whether changing the coils by requiring a single employee to balance the coil was a necessary part of appellant's employment is a question of fact.

{¶62} Second, appellant had to present evidence creating a genuine issue of material fact as to whether appellee possessed knowledge that, if an employee was subjected to the dangerous process or procedure, then harm to the employee was a substantial certainty. The *Fyffe* Court set out the requisite intent for an employer intentional tort. It held that the employer's intent must be more than negligence or recklessness. *Fyffe*, 59 Ohio St.3d at paragraph two of the syllabus. Instead, the requisite intent is present when the employer knows that injuries to employees are certain or substantially certain to occur and the employer nonetheless proceeds with the process, procedure, or condition. Id. "Mere knowledge and appreciation of a risk--something short of substantial certainty--is not intent." Id. This is a difficult standard to meet.

{¶63} Certain facts and circumstances are particularly relevant in attempting to prove that an employer had knowledge of a high probability of harm, including prior accidents of a similar nature, inadequate training, and whether the employer has deliberately removed or deliberately failed to install safety features. *Moore*, 7th Dist. No. 05-BE-3, at ¶37.

{¶64} The evidence as to this second *Fyffe* element is as follows.

{¶65} Bellinger testified that on two or three occasions, he had seen coils similar to the one appellant was holding tip over while an employee was holding them. (Bellinger dep. 41). He further stated that the narrow coils, like the one appellant was holding, were at risk of becoming unbalanced and created a dangerous, unsafe condition when they were being held. (Bellinger dep. 43-44, 68). Yet Bellinger stated that he did not believe that it was certain that someone would be hurt balancing a coil. (Bellinger dep. 66).

{¶66} And Frederick testified that on two or three occasions, coils that he was holding tipped over. (Frederick dep. 43). However, he stated that he was lucky enough to get out of the way. (Frederick dep. 43-44). He also witnessed coils falling while an employee was holding them two to three times a year. (Frederick dep. 44).

{¶67} Frederick even complained to Kevin Ehrenberg, the Salem plant manager, that appellee's method of balancing coils was unsafe. (Frederick dep. 34-37). In fact, Frederick showed Ehrenberg specific safety equipment in a catalog and explained that using this equipment would be safer. (Frederick dep. 37-39). However, Ehrenberg told Frederick that appellee would not pay for that expense. (Frederick dep. 39).

{¶68} Frederick stated that he told no less than three supervisors that the coil-loading method appellee was using was dangerous and that someone was going to get hurt. (Frederick dep. 40). He specifically told them that the coils were unsteady and that they could tip over. (Frederick dep. 40). Frederick stated that the supervisors already knew this. (Frederick dep. 40). However, nothing came of his complaints. (Frederick dep. 37).

{¶69} Additionally, Stivers, Bellinger, and Frederick all testified that appellee never trained employees in the proper way to change or balance a coil. (Stivers dep. 31, 35; Bellinger dep. 17, 31, 36; Frederick dep. 25).

{¶70} Furthermore, appellant's expert in material handling, Walter Girardi, issued a report concerning appellant's injury and appellee's method of loading coils. He opined that appellee's method of loading coils was "very dangerous." (Girardi dep. 23). He also stated that the danger was apparent to anyone who watched the process. (Girardi dep. 25). Girardi stated that harm to employees was substantially certain to occur. (Girardi dep. 26-27).

{¶71} "An expert report stating that the accident was substantially certain to occur may not be sufficient to prevent summary judgment in favor of the employer on the employee's intentional tort claim." *Burgos v. Areway, Inc.* (1996), 114 Ohio App.3d 380, 384, 683 N.E.2d 345. However, here we are faced with more than just

an expert report.

{¶72} In addition to the expert's opinion that harm to employees was substantially certain to occur, we also have testimony that on numerous occasions, heavy, unstable coils like the one appellant was holding, fell over while being balanced by an employee. And two supervisors testified that the employees holding those coils were lucky to escape injury. Furthermore, the evidence demonstrates that appellee never trained its employees in the dangerous task of balancing coils. Significantly, Frederick brought this safety issue to the plant manager's attention and informed him of what equipment to purchase in order to make the coil balancing safer. However, he was told that appellee would not pay to purchase the needed safety equipment. And Frederick told at least three supervisors that someone was going to get hurt using appellee's method of balancing coils. When viewing this evidence in the light most favorable to appellant, as we are required to do, a genuine issue of material fact exists as to whether appellee possessed knowledge that, if an employee was subjected to the process of coil balancing, then harm to the employee would be a substantial certainty.

{¶73} Third, appellant had to present evidence creating a genuine issue of material fact as to whether appellee, despite its knowledge of the dangerous process and the substantial certainty of harm to its employees, continued to require the employee to perform the dangerous task. In order to survive a summary judgment motion, the employee need not demonstrate that the employer ordered the employee to engage in the dangerous task. *Moore*, 7th Dist. No. 05-BE-3, at ¶49. Instead, the employee may satisfy this element by producing, "'evidence that raises an inference that the employer, through its actions and policies, required the employee to engage in the dangerous task.'" Id., quoting *Gibson v. Drainage Prod., Inc.*, 95 Ohio St.3d 171, 766 N.E.2d 982, 2002-Ohio-2008, at ¶24.

{¶74} The evidence as to this element is as follows.

{¶75} Appellant testified that when her machine ran out of coil, she first looked for Bellinger because employees were supposed to have the supervisor load

the new coils. (Kaminski dep. 35). On those occasions when she was able to locate Bellinger, appellant stated that Bellinger would operate the forklift and load the coil for her. (Kaminski dep. 38). However, she was not always able to find him. (Kaminski dep. 37-38). On these occasions, appellant would ask a fellow employee to operate the forklift and load the coil for her. (Kaminski dep. 41). Various people at the plant were licensed by appellee to operate the forklifts. Depending on where the coil was located in the plant, the forklift operator might have to retrieve the coil on one fork and then switch it to the other fork in order to get it into position to be loaded into the press. (Kaminski dep. 38-39). If this was the case, then a second person was required to balance the coil on the floor while the forklift operator put the coil down and switched it to the other fork. (Kaminski dep. 39). Appellant stated that she had previously balanced coils a couple of times before the night she was injured. (Kaminski dep. 39-40).

{¶76} Stivers testified that he was licensed by appellee to operate a forklift. (Stivers dep. 11). He stated that he frequently operated the forklift and changed his own coils as well as other employee's coils. (Stivers dep. 20-21). He had changed appellant's coils in the past. (Stivers dep. 25).

{¶77} Stivers stated that he told appellant that he had to move the coil from the right fork to the left fork and that he was going to look for Bellinger to help him. (Stivers dep. 23-24). The reason Stivers was going to do this was not because he was following a rule that said he had to get the supervisor. (Stivers dep. 33). Instead, it was because appellant is a small woman. (Stivers dep. 34). However, appellant told Stivers that she could hold the coil. (Stivers dep. 24, 32, 58).

{¶78} Stivers stated that Bellinger should have been the one to change the coil because he was the supervisor. However, Stivers testified that he did not look for Bellinger to help because he suspected that Bellinger had been drinking. (Stivers dep. 34-35). Several employees, including appellant and Stivers, testified that Bellinger was sometimes hard to find because he may have been drinking on the job. (Stivers dep. 23; Kaminski dep. 25).

{¶79} Importantly, Stivers also testified that there was no rule that an employee had to get the supervisor to help change a coil. (Stivers dep. 33). In fact, he stated that any employee who was at a press usually held the coil if it needed to be switched from one fork to the other. (Stivers dep. 33). He further stated that supervisors had observed him changing coils in the past and had never told him that he was doing it wrong. (Stivers dep. 43).

{¶80} Bellinger also testified that any employee who was licensed by appellee, not necessarily a supervisor, could operate the forklift and change coils. (Bellinger dep. 23-24). In fact, he stated that he, as a supervisor, was not required to be present to help load all coils. (Bellinger dep. 59). Bellinger further testified that any employee who was free to do it balanced the coils. (Bellinger dep. 42). He stated that the responsibility was not assigned to anyone in particular. (Bellinger dep. 42-43). Instead, whoever was available was required to do the balancing. (Bellinger dep. 43).

{¶81} Additionally, Frederick stated that every day it was necessary for employees to hold coils steady while the forklift operator got the fork through them. (Frederick dep. 28). Frederick stated that all of the employees were required to hold the unstable coils. (Frederick dep. 41).

{¶82} Donald Hardy, a die setter/press operator and assistant supervisor with appellee, testified that there was no policy that a supervisor was required to load the coils. (Hardy dep. 15). In fact, he stated that he frequently loaded coils. (Hardy dep. 15). Hardy further stated that appellant, just like any other employee, could be used to hold a coil. (Hardy dep. 42). It was simply part of the job. (Hardy dep. 39).

{¶83} Given this evidence, a genuine issue of material fact exists as to whether appellee required appellant to balance the coil. There is an indication that appellant and/or Stivers could have decided to wait until they located Bellinger so that he could balance the coil. And Stivers testified that appellant volunteered to balance the coil. But the evidence also demonstrates that all employees, including appellant, were required to balance coils. It was a part of the job of being a press

operator. And appellant had balanced several coils previously. Additionally, while the trial court found that there was a policy requiring a supervisor to be present when loading a coil into a press, the opposite is true. While the various witnesses seemed to suggest that having a supervisor present during coil loading was the ideal situation, this practice was seldom used. Stivers and Hardy, non-supervisors, changed many coils. Given this conflicting evidence, a genuine issue of material fact does exist.

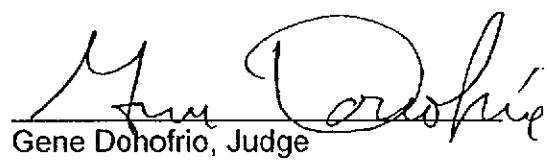
{¶84} Because genuine issues of material fact exist as to all three *Fyffe* elements, summary judgment was not warranted. It should be mentioned, however, that the trial court applied R.C. 2745.01's more stringent test for intentional torts. The trial court concluded that appellee did not act with the intent to injure appellant or with the deliberate intent to cause her injury. Thus, the trial court did not actually consider whether appellee acted with substantial certainty that injury to its employee would occur. Accordingly, appellant's second assignment of error has merit.

{¶85} For the reasons stated above, the trial court's judgment is hereby reversed and the matter is remanded for further proceedings pursuant to law and consistent with this opinion.

Vukovich, J., concurs.

DeGenaro, P.J., concurs.

APPROVED:



Gene Donofrio, Judge

STATE OF OHIO)
) IN THE COURT OF APPEALS OF OHIO
COLUMBIANA COUNTY) SS: SEVENTH DISTRICT

ROSE KIMINSKI,)
)
PLAINTIFF-APPELLANT,)
)
VS.) CASE NO. 07-CO-15
)
METAL & WIRE PRODUCTS COMPANY,) JOURNAL ENTRY
ET AL.,)
)
DEFENDANTS-APPELLEES.)

For the reasons stated in the opinion rendered herein, appellant's two assignments of error have merit and are sustained. It is the final judgment and order of this Court that the judgment of the Common Pleas Court, Columbiana County, Ohio, is reversed and this cause is remanded to the trial court for further proceedings according to law and consistent with this Court's opinion.

Costs taxed to appellees.

JUDGES.

Pursuant to Rule 58(B) of the Ohio Rules of Civil Procedure, the Clerk is directed to serve upon all parties not in default for failure to appear notice of the within judgment. By order of the Court.

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO
CASE NO. 2005-CV-884
JUDGE C. ASHLEY PIKE

FILED
COLUMBIANA COUNTY
COURT OF COMMON PLEAS
APR 20 2007
ANTHONY J. DATTILIO
CLERK (SJC)

ROSE KIMINSKI	)	
	)	
Plaintiff	)	
	)	
-VS-	)	**JUDGMENT ENTRY**
	)	
	)	
METAL & WIRE PRODUCTS COMPANY, et al.	)	
	)	
Defendants	)	

I. Status of the Case

This matter comes before the Court on the Motion of Defendant Metal & Wire Products Company for Summary Judgment; the Plaintiff's Response; and the Defendants' Reply in Support.

Plaintiff Rose Kiminski filed her Complaint August 29, 2005 alleging in her first claim for relief of cause of action under O.R.C. §2745.01 arising out of an injury she sustained while in the course of her employment at Defendant Metal & Wire Products Company on June 30, 2005. Her second claim alleges a common law employment intentional tort. Defendant Metal & Wire Products Company Answered and set forth a Counterclaim for Declaratory Judgment asking this Court to determine and declare the constitutionality of O.R.C. §2745.01.

The Counterclaim for Declaratory Relief was submitted to the Court on the Motion for Summary Judgment of the Defendant and the Cross-Motion for

Summary Judgment of the Plaintiff. The Court entered its judgment finding O.R.C. 2745.01 to be constitutional. The Plaintiff's statutory cause of action as previously described remains pending and is the subject of the present Motion for Summary Judgment.

II. The Standard of Review

Summary judgment under Civ.R. 56(C) is properly granted where the moving party demonstrates the following:

> "(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds could come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party."

[1] In the event the moving party meets this initial burden, the opposing party bears a reciprocal burden in responding to the motion.[2] Under Civ. R. 56(E),"a nonmovant may not rest on the mere allegations or denials of his pleading but must set forth specific facts showing there is a genuine issue for trial."[3] The nonmoving party must produce evidence on any issue for which that party bears the burden at trial.[4]

Because it is a fairly drastic means of terminating litigation, a court must grant summary judgment with caution, resolving all doubts against the moving

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[1] *Welco Industries, Inc. v. Applied Cos.* (1993), 67 Ohio St.3d 344, 346, quoting *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327
[2] *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112
[3] *Chaney v. Clark Cty. Agricultural Soc., Inc.* (1993), 90 Ohio App.3d 421, 424
[4] *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293; and *Celotex v. Catrett* (1986), 477 U.S. 317, 322

party.[5] Nevertheless, summary judgment is appropriate if, after construing the evidence in a light most favorable to the opposing party, there exists no genuine issue of material fact and reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. [6]The evidentiary materials listed in Civ.R. 56(C) include "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any.

III. De Novo Review by Appellate Court

In reviewing a summary judgment, trial and appellate courts use the same standard. Ohio Civil Rule 56. In fact, the appellate court's analysis is conducted under a de novo standard.[7]

IV. Statement of Facts

Plaintiff was employed as a press operator at the Defendants' Salem plant. On June 30, 2005 Plaintiff was working in that position when the press she was running needed re-supplied with a new coil of steel. The type of coil which would need to be loaded into the press was approximately five feet high and weighed 850 pounds. Plaintiff admitted in her deposition that company policy required her to find a supervisor and to have the supervisor load the new coil.

However, when the Plaintiff could not find the supervisor, she insisted that another press operator assist her in loading the new coil. During the loading

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[5] *Osborne v. Lyles* (1992), 63 Ohio St.3d 326, 333
[6] *State ex rel. The V. Cos.v. Marshall* (1998), 81 Ohio St.3d 467, 473
[7] *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. *Reali et al. v. Society National Bank* (1999), 133 Ohio App.3d 844, 846 (Seventh District)

process the coil fell causing significant injury to the Plaintiff. To prevail Plaintiff must show pursuant to O.R.C. §2745.01 that her employer committed a tortuous act with intent to injure her or had the belief that the injury was substantially certain to occur under the circumstances presented.

V. Analysis

There is no evidence before this Court that the Defendant/Employer committed a tortuous act with the intent to injure the Plaintiff or with the belief that the injury was substantially certain to occur. As used in the statute, "substantially certain" means that an employer acts with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death. While this statute is relatively new, a fair reading of the same and a consideration of prior cases in this appellate district under a previous similar statute, lead this Court to the conclusion that the Defendant has not acted with the intent to injure the Plaintiff nor with deliberate intent to cause her injury. It cannot be overlooked that this Defendant was injured when she voluntarily took the task of assisting in loading a coil into her press contrary to the policy of the Defendant/Employer which called for her to summon a supervisor to accomplish the task.

V. The Ruling

The Court finds no genuine issues of material fact; regards this case as nearly an abuse of process; dismisses the Complaint; cancels all further proceedings; and directs that the costs be taxed to the Plaintiff with the deposit to be first applied.

C. ASHLEY PIKE, JUDGE

DATED: April 18, 2007/kam

cc: File
David A. Forrest, Esq.
Dennis A. DiMartino, Esq.
William E. Pfau, III, Esq.

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO
CASE NO. 2005-CV-884
JUDGE C. ASHLEY PIKE

ROSE KAMINSKI)
)
Plaintiff)
)
-VS-) **JUDGMENT ENTRY**
)
)
METAL & WIRE PRODUCTS COMPANY, et al.)
)
Defendants)

I. Status of the Case

This matter comes before the Court on the Defendants' Motion for Summary Judgment on its Counterclaim. The Counterclaim seeks a declaratory judgment that O.R.C. §2745.01 is constitutional. Plaintiff has filed a Brief in Opposition to the Defendants' Motion for Summary Judgment on the Defendants' Counterclaim and further a Cross-Motion for Summary Judgment asking the Court to rule instead that O.R.C. §2745.01 is unconstitutional.

II. The Standard of Review

Summary judgment under Civ.R. 56(C) is properly granted where the moving party demonstrates the following:

> "(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds could come to but one conclusion, and viewing such evidence most

> strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party."

[1] In the event the moving party meets this initial burden, the opposing party bears a reciprocal burden in responding to the motion.[2] Under Civ. R. 56(E),"a nonmovant may not rest on the mere allegations or denials of his pleading but must set forth specific facts showing there is a genuine issue for trial."[3] The nonmoving party must produce evidence on any issue for which that party bears the burden at trial.[4]

Because it is a fairly drastic means of terminating litigation, a court must grant summary judgment with caution, resolving all doubts against the moving party.[5] Nevertheless, summary judgment is appropriate if, after construing the evidence in a light most favorable to the opposing party, there exists no genuine issue of material fact and reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. [6]The evidentiary materials listed in Civ.R. 56(C) include "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any.

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[1] *Welco Industries, Inc. v. Applied Cos.* (1993), 67 Ohio St.3d 344, 346, quoting *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327
[2] *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112
[3] *Chaney v. Clark Cty. Agricultural Soc., Inc.* (1993), 90 Ohio App.3d 421, 424
[4] *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293; and *Celotex v. Catrett* (1986), 477 U.S. 317, 322
[5] *Osborne v. Lyles* (1992), 63 Ohio St.3d 326, 333
[6] *State ex rel. The V. Cos.v. Marshall* (1998), 81 Ohio St.3d 467, 473

III. De Novo Review by Appellate Court

In reviewing a summary judgment, trial and appellate courts use the same standard. Ohio Civil Rule 56. In fact, the appellate court's analysis is conducted under a de novo standard.[7]

IV. The Ruling

It is the opinion of the Court that especially a trial court, in the absence of a clearly unconstitutional provision, should afford a presumption of constitutionality to Acts of the General Assembly. The Court cannot find the statute to be clearly unconstitutional. Therefore, the Court finds the statute to be constitutional; grants the Motion of the Defendants in favor of them on the Counterclaim; and overrules the Plaintiff's Cross-Motion for Summary Judgment.

This case shall remain on this Court's docket as previously scheduled.

C. ASHLEY PIKE, JUDGE

DATED: December 19, 2006/kam

cc: File
David A. Forrest, Esq.
Dennis A. DiMartino, Esq.
William E. Pfau III, Esq.

[7] *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. *Reali et al. v. Society National Bank* (1999), 133 Ohio App.3d 844, 846 (Seventh District)

government by the remaining provisions of the constitution: Cincinnati, W. & Z.R. Co. v. Commissioners, 1 Ohio St. 77 (1852).

Exercise of power not delegated in constitution

Since this section of the constitution expressly excludes from the legislative department the exercise of any power which is not delegated to it in the constitution, the authority of a single branch of the legislature to act separately must be found in express terms or by necessary implication in the constitution: State ex rel. Robertson Realty Co. v. Guilbert, 75 Ohio St. 1, 78 N.E. 931 (1906).

Inherent right of sovereign people

The sovereign people have the inherent right under our form of government to declare, by their constitution, any act or acts unlawful: Hoffrichter v. State, 102 Ohio St. 65, 130 N.E. 157 (1921).

Restriction of powers

This section does not restrict or limit the powers which are conferred by the remaining clauses of the constitution: State ex rel. Atty. Gen. v. Covington, 29 Ohio St. 102 (1876).

ARTICLE II: LEGISLATIVE

Section

§ 1 In whom legislative power is vested.

The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

HISTORY: (As amended Nov. 3, 1953; 125 v 1095.)

Cross-References to Related Sections

General assembly, RC § 101.01 et seq.
Initiative; referendum, RC § 3519.01 et seq.

Ohio Constitution

Compensation, OConst art III, § 19.
Election returns, OConst art III, § 3.
Executive power vested in governor, OConst art III, § 5.
Vacancy in office of governor, OConst art III, § 15.
If vacancy shall occur while executing the office of governor, who shall act, OConst art III, § 17.
Terms, OConst art III, § 2.

Comparative Legislation

Legislative power, USConst art I, § 1

Text Discussion

Functions of the agencies. **6 Ohio Civ. Prac.** § 310.02

Research Aids

Legislative power:
O-Jur3d: Const L §§ 31, 292, 310, 369, 528; Init & Ref §§ 2, 3, 7, 13; State § 13
Am-Jur2d: Const L § 11; Pub Off §§ 28, 96, 156, 230, 299
Power to tax:
O-Jur3d: Tax §§ 23, 36, 37, 510
Am-Jur2d: State Tax § 68 et seq

Priority between mechanics' liens and advances made under previously executed mortgage. 80 ALR2d 179.
Taking or negotiation of unsecured note of owner or contractor as raising presumption of payment waiving mechanic's lien. 91 ALR2d 437.
Waiver of filing of mechanics' lien or proceeding for enforcement as affecting right to arbitration. 73 ALR3d 1066.

CASE NOTES AND OAG

Mechanics' liens generally

The power bestowed by the Ohio Constitution which is not to be limited or impaired is the power of mechanics to secure their just dues. Thus, a bad-faith filing of a mechanic's lien may legitimately serve as a basis for a claim for tortious interference with a contractual relationship: Campbell v. Tomb & Assoc., 1991 Ohio App. LEXIS 5799 (2nd Dist. 1991).

There has been a tendency to construe the conditions in Ohio mechanic's lien law strictly when applied to limit the rights of lienholders; Ohio mechanic's lien law is remedial in nature and is therefore to be construed liberally: Blanchester Lumber & Supply, Inc. v. White, 61 Ohio Misc. 2d 466, 580 N.E.2d 81 (CP 1989).

Where the legislature provides that an owner of real estate shall not be liable to subcontractors and materialmen who have furnished labor and materials for the construction of a house for a greater amount than he contracted to pay the original contractor, the application of mechanics' liens to the interest of the owner in such real estate is permissible, even though the contract price was to be paid in real estate and not in money: Vaytko v. Bunting, 122 Ohio St. 552, 172 N.E. 665 (1930).

The mechanic's lien law, therefore, under the Ohio Constitution, establishes a right in rem and not a right in personam. This means, quoting substantially from an authoritative Ohio case, that the proceeding is brought to determine the status of the thing itself, the particular thing in the case (the real estate), and is confined to the subject-matter in specie: Schuholz v. Walker, 111 Ohio St. 308, 145 N.E. 537 (1924).

Ohio Constitution art II, § 33 is intended to apply to mechanics' liens upon realty. Even if OConst art II, § 33 were intended to apply to mechanics' liens on personalty, it is not self-executing; and, in the absence of legislation, no liens can be asserted thereunder: Metropolitan Securities Co. v. Orlow, 107 Ohio St. 583, 140 N.E. 306, 32 A.L.R. 992 (1923).

This provision gives the legislature unlimited power to legislate upon the subject of mechanics' liens. It may pass any kind of bill that it chooses and the same will not be unconstitutional: West Side Lumber & Manufacturing Co. v. Lancaster Paper Mill Co., 5 Ohio App. 253 (1915).

§ 34 Welfare of employes.

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power.

HISTORY: (Adopted September 3, 1912.)

Cross-References to Related Sections

Labor generally, RC Title 41.

Ohio Administrative Code

Industrial commission, division of safety and hygiene. OAC ch. 4121:1-1 et seq.

Research Aids

Welfare of employees:
O-Jur3d: Bus & Occ §§ 16, 21; Empl Rel §§ 81, 94; Health § 23; Pens § 122; Pub Wks §§ 139, 140; Sch § 225
Am-Jur2d: M & S §§ 7, 159

ALR

Liability for discharge of at-will employee for in-plant complaints or efforts relating to working conditions affecting health or safety. 35 ALR4th 1031.
Validity and construction of statute giving employee the right to review and comment upon personnel record maintained by the employer. 64 ALR4th 619.
Validity of statute, ordinance, or charter provision requiring that workmen on public works be paid the prevailing or current rate of wages. 18 ALR3d 944.

Law Review

Brady v. Safety-Kleen Corp.: tipping Ohio's workers' compensation scale in favor of the employee. Case comment. 54 OSLJ 837 (1993).
The regulation of genetic testing in the workplace — a legislative proposal. Ellen R. Peirce. 46 OSLJ 771 (1985).

CASE NOTES AND OAG

INDEX

Binding arbitration

The binding arbitration provisions of RC Chapter 4117. are a valid exercise of the legislative function under OConst art II, § 34: Columbus v. State Emp. Relation Bd., 29 Ohio Misc. 2d 35, 29 Ohio B. 421, 505 N.E.2d 651 (CP 1985).

Constitutionality of particular statutes

Revised Code § 2745.01 is unconstitutional in its entirety: Johnson v. BP Chemicals, Inc., 85 Ohio St. 3d 298, 707 N.E.2d 1107 (1999).

Revised Code § 4121.80 exceeds and conflicts with the legislative authority granted to the general assembly pursuant to OConst art II, §§ 34 and 35 and is unconstitutional in toto: Brady v. Safety-Kleen Corp., 61 Ohio St. 3d 624, 576 N.E.2d 722 (1991).

Employment, defined

The legislature, by defining the term "employment" in GC § 1345-1(c) [RC § 4141.01(B)], did not enlarge upon powers granted to it by OConst art II, § 34, authorizing legislation for the welfare of employees; purpose of that section not being to define employees, but to clarify the right of legislature to pass laws to promote general welfare of employees by improving conditions of their employment: State v. Iden, 71 Ohio App. 65, 25 Ohio Op. 404, 47 N.E.2d 907 (1942).

Exercise of legislative authority

Revised Code § 3345.45 is a valid exercise of legislative authority under OConst art II, § 34: Am. Assn. of Univ.

Professors, Cent. State Univ. Chapter v. Cent. State Univ., 87 Ohio St. 3d 55, 717 N.E.2d 286 (1999).

Labor contracts

Revised Code § 3319.08.6 is a valid regulation enacted pursuant to the authority of the constitution of Ohio, as well as pursuant to the general police powers of the state, and its enforcement does not impair the obligations of labor contracts in existence at the time of its effective date within the scope of the Constitution, either federal or state: Vincent v. Elyria Board of Education, 7 Ohio App. 2d 58, 36 Ohio Op. 2d 151, 218 N.E.2d 764 (1966).

Laws, construed

The word "laws" does not embrace municipal ordinances, and therefore this provision defines the legislative power of the general assembly of Ohio only: Cincinnati v. Correll, 141 Ohio St. 535, 26 Ohio Op. 116, 49 N.E.2d 412 (1943).

Minimum Fair Wage Standards Act

Revised Code § 4111.03 of the Minimum Fair Wage Standards Act, relating to overtime compensation, preempts any conflicting local ordinance: Wray v. Urbana, 2 Ohio App. 3d 172, 2 Ohio B. 188, 440 N.E.2d 1382 (1982).

Minimum wage act

The minimum wage act of Ohio, comprising GC §§ 154-45d to 154-45t (RC § 4111.01 et seq), is a welfare measure passed by the general assembly pursuant to the authority conferred by OConst art II, § 34. It sets forth the policy motivating its enactment, outlines standards to be observed in the determination of a "fair wage," prescribes the procedure to be followed by the governmental agency designated to carry the law into execution and does not represent a delegation of legislative power: Strain v. Southerton, 148 Ohio St. 153, 35 Ohio Op. 167, 74 N.E.2d 69 (1947).

Ohio civil service statutes

Because OConst art XV, § 10 specifically provides for civil service legislation, we presume that when the general assembly enacted the civil service statutes, including RC § 124.44, it did so pursuant to OConst art XV, § 10, not pursuant to OConst art II, § 34; therefore, the final clause in OConst art II, § 34 would have no application where the Ohio civil service statutes are concerned. Consequently, a conflict between a home-rule charter provision and a civil service statute is distinguishable from a conflict between a home-rule charter provision and the Public Employees' Collective Bargaining Act: Springfield Command Officers Ass'n v. City Comm'n, 62 Ohio App. 3d 301, 575 N.E.2d 499 (1990).

Ohio Public Employees' Collective Bargaining Act

The Ohio Public Employees' Collective Bargaining Act, RC Chapter 4117., and specifically RC § 4117.14(I), are constitutional as they fall within the general assembly's authority to enact employee welfare legislation pursuant to OConst art II, § 34. OConst art XVIII, § 3, the home-rule provision, may not be interposed to impair, limit or negate the act: Rocky River v. State Emp. Relations Bd., 43 Ohio St. 3d 1, 539 N.E.2d 103 (1989).

Police and fireman's pension fund

The creation and the administration, management, and the control of a state police and firemen's disability and pension fund, as provided in RC §§ 742.01 to 742.49, inclusive, is a valid enactment of the general assembly by virtue of the provisions of OConst art II, § 34: State ex rel. Board of Trustees v. Board of Trustees, 12 Ohio St. 2d 105, 41 Ohio Op. 2d 410, 233 N.E.2d 135 (1967).

Unused sick leave

An ordinance providing that employees may not receive any compensation for unused sick leave upon retirement is in unconstitutional conflict with RC § 124.39 under both OConst art II, § 34 and art XVIII, § 3: Fraternal Order of Police, Lodge 39 v. East Cleveland, 64 Ohio App. 3d 421, 581 N.E.2d 1131 (1989).

Wage formula

In the absence of conflict with general law, OConst art II, § 34, has no application to a wage formula established by municipal charter and carried out annually by ordinance of counsel: Fuldauer v. Cleveland, 32 Ohio St. 2d 114, 61 Ohio Op. 2d 374, 290 N.E.2d 546 (1972).

Wage law

Ohio's prevailing wage law, RC §§ 4115.03 through 4115.15, which: (1) manifests a genuine statewide concern for the integrity of the collective bargaining process in the building and construction trades through a comprehensive statutory plan of worker rights and remedies, and (2) has significant extraterritorial effects, beyond the scope of any municipality's local self-government or police powers, preempts any conflicting local ordinance: State ex rel. Evans v. Moore, 69 Ohio St. 2d 88, 23 Ohio Op. 3d 145, 431 N.E.2d 311 (1982).

§ 35 Workmen's [Workers'] compensation.

For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all right of claimants thereto. Such board shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, and so as to equalize, insofar as possible, the burden thereof, to be expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. Such board shall have full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employes, enacted by the General Assembly or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease or death resulted because of such

failure by the employer, such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law, shall be added by the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; and, if such compensation is paid from the state fund, the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award, notwithstanding any and all other provisions in this constitution.

HISTORY: (As amended November 6, 1923. To take effect January 1, 1924.)

Cross-References to Related Sections

Bureau of Workers' Compensation, RC § 4121.12 et seq.
Expenditures by bureau for prevention of industrial accidents and diseases, RC § 4121.37.
Order to correct violation, imposition of civil penalty by industrial commission on employer in re claim for additional award, RC § 4121.47.
Staff hearing officers' jurisdiction in certain matters, RC § 4121.35.
Workers' compensation, RC § 4123.01 et seq.
Paid compensation defined, RC § 4123.35.
Public fund; private fund; contributions; disbursements, RC § 4123.30.

Ohio Administrative Code

Bureau of workers' compensation. **OWCH:** OAC ch. 4123-1 et seq.
Industrial commission. **OWCH:** OAC ch. 4121-1 et seq.
Division of safety and hygiene. OAC ch. 4121:1-1 et seq.

Text Discussion

Background of the occupational disease statute. **Ohio Workers' Comp.** § 8.1
Death benefits. **Ohio Workers' Comp.** § 11.3
Definition of intentional tort. **Ohio Workers' Comp.** § 6.28
Functions of the agencies. **6 Ohio Civ. Prac.** § 310.02
Generally. **Ohio Workers' Comp.** § 1.1
Lawful requirement exception. **Ohio Workers' Comp.** § 13.1
1913 compulsory compensation law. **Ohio Workers' Comp.** § 2.11
Operation of compensation statutes. **Ohio Workers' Comp.** § 1.8
Products liability defenses; employer-employee relationships. **Prod. Liab.** § 17.12
Rules of the administrative agencies. **Ohio Workers' Comp.** § 3.11
Sources of procedural authority for administrative agencies. **6 Ohio Civ. Prac.** § 310.03
State insurance fund. **Ohio Workers' Comp.** § 14.1
Workers' compensation. **3 Ohio Civ. Prac.** § 144C.01

Research Aids

Workers' compensation:
O-Jur3d: Bus & Occ § 21; Death § 29; Gov Tort Liab § 89; Pub F § 68; Workers' Comp §§ 4, 5, 7, 19, 33, 38, 103, 215, 219, 269, 373-375
Am-Jur2d: Const L §§ 83, 573, 632, 769; Workm C §§ 10-26

ALR

Employer's tort liability to worker for concealing work place hazard or nature or extent of injury. 9 ALR4th 778.
Mental disorder as compensable under workmen's compensation acts. 108 ALR5th 1.
Right of employee to maintain common-law action for negligence against workmen's compensation insurance carrier. 93 ALR2d 598.
Right to workers' compensation for injuries suffered after termination of employment. 10 ALR5th 245, 108 ALR5th 1.
Workmen's compensation, use of medical books or treatises as independent evidence. 17 ALR3d 993.
Workmen's compensation act as furnishing exclusive remedy for employee injured by product manufactured, sold, or distributed by employer. 9 ALR4th 873.

Law Review

Achieving safer workplaces by expanding employers' tort liability under workers' compensation laws. Kenneth Matheny. 19 NoKyLRev 457 (1992).
Availability of common law remedies for noncompensable occupational diseases. Casenote. 5 OSLJ 436 (1939).
Blankenship v. Cincinnati Milacron Chemicals, Inc. [69 OS2d 608 (1982)]: some fairness for Ohio workers and some uncertainty for Ohio employers. Note. 15 ToledoLRev 403 (1983).
Blankenship v. Cinti. Milacron Chemical Co.: workers' compensation and the intentional tort: a new direction for Ohio. Case note. 12 CapitalULRev 287 (1982).
Brady v. Safety-Kleen Corp.: intentional tort actions in workers' compensation cases — back to a common law cause of action. Note. 19 NoKyLRev 545 (1992).
Brady v. Safety-Kleen Corp.: tipping Ohio's workers' compensation scale in favor of the employee. Case comment. 54 OSLJ 837 (1993).
The compensability of a physical injury as a result of mental stimulus in workers' compensation — the dark ages in Ohio. Carole C. Butler. 13 CapitalULRev 1 (1983).
The constitutionality of off setting collateral benefits under Ohio Revised Code section 2317.45. Note. 53 OSLJ 587 (1992).
The crumbling tower of architectural immunity: evolution and expansion of the liability to third parties. Note. 45 OSLJ 217 (1984).
Injury suffered as a result of violation of hours of labor statute. Casenote. 7 OBar (No.51) 718, 1 OSLJ 144 (1925).
Intentional torts in the workplace — Further erosion of the workers' compensation act exclusive remedy bar to tort actions — Blankenship v. Cincinnati Milacron Chemicals, Inc. Note. 10 NoKyLRev 355 (1983).
The need for workers' compensation reform in Ohio's definition of injury: Szymanski v. Halle's Department Store. Note. 31 ClevStLRev 145 (1982).
The Ohio compensation system. James L. Young. 19 OSLJ 541 (1958).
Ohio's attempt to circumvent the concept of intentional tort: enactment of Revised Code Section 4121.80. Comment. 16 CapitalULRev 279 (1986).
Ohio's "employment intentional tort": a workers' compensation exception, or the creation of an entirely new cause of action? Note. 44 ClevStLRev 381 (1996).
Ohio's last word on comparative negligence? — Revised Code Section 2315.19. Jeffrey A. Hennemuth. 9 Ohio N.U.L. Rev. 31 (1982).
Safety requirements of the industrial commission. Nolan Hovey. 23 OBar (No.21) 461 (1950).
Some comments on workmen's compensation. [illegible] Donnelly. 15 OBar (No.14) 183 (1942).
State ex rel. Berry v. Industrial Commission: Impact specificity requirement in light of the abro[illegible] same evidence test. Note. 13 CapitalULRe[illegible]

items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the repassage of a bill.

ARTICLE II.

SEC. 33. Laws may be passed to secure to mechanics artisans, laborers, sub-contractors and material men, their just dues by direct lien upon the property, upon which they have bestowed labor or for which they have furnished material. No other provision of the constitution shall impair or limit this power.

ARTICLE II.

SEC. 34. Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power.

ARTICLE II.

SEC. 35. For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational diseases, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom, and taking away any or all rights of action or defenses from employes and employers; but no right of action shall be taken away from any employe when the injury, disease or death arises from failure of the employer to comply with any lawful requirement for the protection of the lives, health and safety of employes. Laws may be passed establishing a board which may be empowed to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto.

ARTICLE II.

SEC. 36. Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formation of drainage and conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and all other minerals.

ARTICLE II.

SEC. 37. Except in cases of extraordinary emergencies, not to exceed eight hours shall constitute a day's work, and not to exceed forty-eight hours a week's work, for workmen engaged on any public work carried on or aided by the state, or any political sub-division thereof, whether done by contract, or otherwise.

ARTICLE II.

SEC. 38. Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law; and this method of removal shall be in addition to impeachment or other method of removal authorized by the constitution.

ARTICLE II.

SEC. 39. Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings.

ARTICLE II.

SEC. 40. Laws may be passed providing for a system of registering, transferring, insuring and guaranteeing land titles by the state or by the counties thereof, and for settling and determining adverse or other claims to and interests in, lands the titles to which are so registered, insured or guaranteed, and for the creation and collection of guaranty funds by fees to be assessed against lands, the titles to which are registered; and judicial powers with right of appeal may by law be conferred upon county recorders or other officers in matters arising under the operation of such system.

ARTICLE II.

SEC. 41. Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories in the state; and no person in any such penal institution or reformatory while under sentence thereto, shall be required or allowed to work at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory without the State of Ohio, and such goods made within the State of Ohio, excepting those disposed of to the state or any political subdivision thereof or to any public institution owned, managed or controlled by the state or any political subdivision thereof, shall not be sold within this state unless the same are conspicuously marked "prison made." Nothing herein contained shall be construed to prevent the passage of laws providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political sub-division thereof, or for or to any public institution owned or managed and controlled by the state or any political sub-division thereof.

ARTICLE III.

SEC. 8. The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation or message to the general assembly issued by the governor during said special session, but the general assembly may provide for the expenses of the session and other matters incidental thereto.

those courts by OConst art IV, §§ 2 and 6: State ex rel. Pressley v. Industrial Comm., 11 Ohio St. 2d 141, 40 Ohio Op. 2d 141, 228 N.E.2d 631 (1967).

Since both the common pleas court and the court of appeals have the power and authority to issue a writ of mandamus, the supreme court, in the exercise of its discretion, will ordinarily refuse to issue the extraordinary writ of mandamus where the purpose of the relator is primarily the enforcement or protection of purely private rights: State ex rel. Allied Wheel Products, Inc. v. Industrial Comm., 161 Ohio St. 555, 53 Ohio Op. 419, 120 N.E.2d 421 (1954).

The supreme court cannot grant mandamus to compel governor to recognize his signature to oil lease on state lands, and prevent cancellation: State ex rel. Cope v. Cooper, 122 Ohio St. 321, 171 N.E. 399 (1930).

A writ of mandamus will be denied by the supreme court, when the questions presented have been raised in a lower court by pending injunction proceedings: State ex rel. Standard Oil Co. v. Harris, 109 Ohio St. 392, 141 N.E. 244 (1924).

Writ of prohibition

To support the issuance of a writ of prohibition, appellants must show that the court or officer against whom the writ is sought is about to exercise judicial or quasi-judicial power; that the exercise of such power is unauthorized by law; and that refusal of the writ will result in injury for which there is no other adequate remedy in the ordinary course of the law: State ex rel. Susi v. Flowers, 43 Ohio St. 2d 11, 72 Ohio Op. 2d 6, 330 N.E.2d 662 (1975).

The function of a writ of prohibition is to restrain inferior courts and tribunals from exercising jurisdiction beyond that legally conferred, and it will be awarded only when there is no other available adequate remedy: State ex rel. Carmody v. Justice, 114 Ohio St. 94, 150 N.E. 430 (1926).

The writ of prohibition is a high prerogative writ to be used with great caution in the furtherance of justice and only where there is no other regular, ordinary and adequate remedy: State ex rel. Nolan v. Clen- Dening, 93 Ohio St. 264, 112 N.E. 1029 (1915).

—Jurisdiction of municipal court

A writ of prohibition is not the proper method to test the power of a municipal court to entertain jurisdiction over misdemeanor charges arising out of the same incident in which a felony indictment was previously disposed of in the court of common pleas: State ex rel. Davis v. Crush, 46 Ohio St. 2d 360, 75 Ohio Op. 2d 441, 348 N.E.2d 275 (1976).

—Original jurisdiction of supreme court

Under the Ohio constitution of 1912 the writ of prohibition was added to the original jurisdiction of the supreme court: State ex rel. Nolan v. ClenDening, 93 Ohio St. 264, 112 N.E. 1029 (1915).

—Standing

In order to be entitled to a writ of prohibition, the relator has to establish that: (1) the respondent is about to exercise judicial or quasi-judicial power; (2) the exercise of such power is unauthorized by law; and (3) denial of the writ will cause injury to the relator for which no other adequate remedy in the ordinary course of law exists. State Ex Rel. McGrath, — Ohio App. 3d —, — N.E. 2d —, 2003 Ohio App. LEXIS 1865 (Apr. 17, 2003).

A newspaper has standing to seek a writ of prohibition to prevent a trial court from enforcing an order improperly excluding the public and reporters for the news media from pretrial hearings on a motion to suppress evidence: State ex rel. Dayton Newspapers, Inc. v. Phillips, 46 Ohio St. 2d 457, 76 Ohio Op. 2d 511, 351 N.E.2d 127 (1976).

Writ of quo warranto

A writ of quo warranto will be allowed where a charter municipality seeks the ouster of respondent from her office as a member of city council because of her employment as a public school teacher which constitutes other "public employment" as prohibited by the city charter: State ex rel. Highland Heights v. Kee, 42 Ohio St. 2d 234, 71 Ohio Op. 2d 219, 327 N.E.2d 770 (1975).

As members of a county building commission are not public officers, the supreme court cannot inquire into their title to office in quo warranto: State ex rel. Stanton v. Callow, 110 Ohio St. 367, 143 N.E. 717 (1924).

Ohio Constitution art IV, § 2 grants original jurisdiction in quo warranto to the supreme court; but it does not define the cases in which quo warranto may issue: State ex rel. Lindley v. Maccabees, 109 Ohio St. 454, 142 N.E. 888 (1924).

The writ of quo warranto owes its existence and its scope in Ohio to constitutional and statutory provisions: State ex rel. Price v. Columbus, D. & M. Elec. Co., 104 Ohio St. 120, 135 N.E. 297 (1922).

—Authority of legislation

——Jurisdiction of supreme court

The legislature cannot limit the jurisdiction of the supreme court in quo warranto: State ex rel. Turner v. Fender, 106 Ohio St. 191, 140 N.E. 182 (1922).

§ 3 Court of appeals.

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B)(1) The courts of appeals shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B) (2) of this article. No judgment resulting from a

trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

(Amended November 8, 1994)

Analogous to former Art. IV, § 6.

Cross-References to Related Sections

Appeals in criminal cases, RC § 2953.01 et seq.
Court of appeals, RC § 2501.01 et seq.
Habeas Corpus, RC § 2725.01 et seq.
Mandamus, RC § 2731.01 et seq.
Mandamus action to require production of public record, RC § 149.43.
New trial or reversal, RC § 2321.18.
Procedure on appeal, RC § 2505.01 et seq.
Quo warranto, RC § 2733.01 et seq.

Ohio Rules

Appellate procedure, Page's ORC, Titles XXIII-XXV [23-25].

Comparative Legislation

Tribunals inferior to supreme court, USConst art I, § 8; USConst art III, § 1

Text Discussion

Appealability; final orders. **6 Ohio Civ. Prac.** § 302.01
Appellate jurisdiction of the courts of appeals. **6 Ohio Civ. Prac.** § 300.02
Appellate review generally. **2 Anderson Fam. L.** § 22.1
Conditional appeals — certified question. **6 Ohio Civ. Prac.** § 307.04
The extraordinary writs. **6 Ohio Civ. Prac.** § 308.01
Final orders in criminal cases. **6 Ohio Civ. Prac.** § 306.05
Mandamus generally. **Ohio Workers' Comp.** § 12.9
Probate court jurisdiction. **1 Ohio Prob. Prac.** § 2.03
Release of defendant pending appeal to supreme court. **6 Ohio Civ. Prac.** § 306.08
Remedies for improper detention/shelter care. **2 Anderson Fam. L.** § 14.16
Table of appealable or non appealable orders. **6 Ohio Civ. Prac.** § 302.05

Forms

Generally. **3 Ohio Civ. Prac.** Form § 118.01
Liability of school districts. **3 Ohio Civ. Prac.** Form § 121.01
Procedure. **2 Ohio Civ. Prac.** Form § 72.04
Rules of law governing original jurisdiction. **3 Ohio Civ. Prac.** Form § 90.01
Sovereign immunity of schools. **3 Ohio Civ. Prac.** Form § 130.01
Venue. **2 Ohio Civ. Prac.** Form § 72.03
Writ of. **2 Ohio Civ. Prac.** Form § 72.10

Research Aids

Jurisdiction of court of appeals:
O-Jur3d: Appell R §§ 20, 26, 27, 35, 192, 514, 596, 656, 672, 673, 689, 694, 697, 700; Cts & Jud §§ 15, 31, 241, 255, 336, 337, 417, 497; Dis & Dep § 218; Em Dom § 384; Hab Corp §§ 37, 64; Mand, Proc & Pro §§ 13, 186, 198; Quo War § 23
Am-Jur2d: A & E §§ 4-171; Const L § 653

ALR

Amendment of judgment as affecting time for taking or prosecuting appellate review proceedings. 21 ALR2d 285.
Award of damages for dilatory tactics in prosecuting appeal in state court. 91 ALR3d 661.
Right to perfect appeal, against party who has not appealed, by cross-appeal filed after time for direct appeal has passed. 32 ALR3d 1290.
Which statute of limitations applies to efforts to compel arbitration of a dispute. 77 ALR4th 1071.

Law Review

Appellate jurisdiction of the courts of appeals in Ohio. 9 OSLJ 157.
The 1968 modern courts amendment to the Ohio constitution. William W. Milligan and James E. Pohlman. 29 OSLJ 811 (1968).
Special proceedings in Ohio: what is the Ohio Supreme Court doing with the final judgment rule? Note. 41 ClevStLRev 537 (1993).
State v. Jenks fails to clarify appellate standards of evidence review in Ohio. Note. 26 AkronLRev 113 (1992).
SYMPOSIUM: Intermediate appellate court practice — problems and solutions. Samuel H. Bell, et al. 16 AkronLRev 1-150 (1982).

CASE NOTES AND OAG

INDEX

SECTION 2. That said original section 7965 of the General Code be and the same is hereby repealed.

C. L. SWAIN,
Speaker of the House of Representatives.
HUGH L. NICHOLS,
President of the Senate.

Passed February 20th, 1913.
Approved March 12th, 1913.

JAMES M. COX,
Governor.

Filed in the office of the Secretary of State March 13th, 1913. 41 G.

The sectional number on the margin hereof is designated as provided by law. TIMOTHY S. HOGAN, *Attorney General.*

[Amended Senate Bill No. 48.]

AN ACT

To further define the powers, duties and jurisdiction of the state liability board of awards with reference to the collection, maintenance and disbursement of the state insurance fund for the benefit of injured, and the dependents of killed employes and requiring contribution thereto by employers, and to repeal sections 1465-42, 1465-43, 1465-45, 1465-46, 1465-53, 1465-54, 1465-55, 1465-56, 1465-57, 1465-58, 1465-59, 1465-60, 1465-61, 1465-62, 1465-63, 1465-64, 1465-65, 1465-66, 1465-67, 1465-68, 1465-69, 1465-70, 1465-71, 1465-72, 1465-73, 1465-74, 1465-75, 1465-76, 1465-77, 1465-78, 1465-79, of the General Code.

Be it enacted by the General Assembly of the State of Ohio:

Sec'n 1465-41a.

Additional powers and duties.

SECTION 1. That in addition to the powers, duties and jurisdiction now conferred and imposed upon it by law, the state liability board of awards shall have and exercise the powers, duties and jurisdiction provided for in this act.

Section 1465-42.

Main office in Columbus, but branch offices may be established.

SECTION 2. The board shall keep and maintain its main office in the city of Columbus, and such branch office or offices in other cities of the state as it shall deem proper, and shall provide suitable rooms, necessary office furniture, supplies, books, periodicals and maps for the same. All necessary expenses shall be audited and paid out of the state treasury. It shall provide itself with a seal for the authentication of its orders, awards and proceedings, upon which shall be inserted the words "STATE LIABILITY BOARD OF AWARDS—STATE OF OHIO—OFFICIAL SEAL."

Seal.

The board may hold sessions at any place within the state.

Section 1465-43.

Employes.

Compensation.

SECTION 3. The board may employ a secretary, actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers and other assistants, and fix their compensation. Such employment and compensation shall be first approved by the governor and shall be paid out of the state treasury. The members of the board, secretary,

actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers, and other assistants that may be employed shall be entitled to receive from the state treasury their actual and necessary expenses while traveling on the business of the board, and the members of the board may confer and meet with officers of other states and officers of the United States on any matters pertaining to their official duties. Such expenses shall be itemized and sworn to by the person who incurred the expense and allowed by the board.

Expenses.

Section 1465-45. SECTION 4. Every employer shall furnish the board, upon request, all information required by it to carry out the purposes of this act. In the month of January of each year, every employer of the state, employing five or more employes regularly in the same business, or in or about the same establishment, shall prepare and mail to the board, at its main office in the city of Columbus, Ohio, a statement containing the following information, viz.: the number of employes employed during the preceding year from January 1 to December 31st inclusive; the number of such employes employed at each kind of employment; and, the aggregate amount of wages paid to such employes, which information shall be furnished on a blank or blanks to be prepared by the board; and it shall be the duty of the board to furnish such blanks to employers free of charge, upon request therefor. Every employer receiving from the board any blank, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly all questions therein propounded, and to give all the information therein sought, or if unable to do so, he shall give to the board in writing good and sufficient reasons for such failure. The board may require that the information herein required to be furnished be verified under oath and returned to the board within the period fixed by it or by law. The board or any member thereof, or any person employed by the board for that purpose, shall have the right to examine, under oath, any employer, or the officer, agent or employe thereof for the purpose of ascertaining any information which such employer is required by this act to furnish to the board.

Annual statement of information by employer to the board.

Information may be required under oath.

Any employer who shall fail or refuse to furnish to the board the annual statement herein required, or who shall fail or refuse to furnish such other information as may be required by the board under authority of this section, shall be liable to a penalty of five hundred dollars, to be collected in a civil action brought against said employer in the name of the state; all such penalties, when collected, shall be paid into the state insurance fund and become a part thereof.

Penalty on failure to furnish information.

Section 1465-46. SECTION 5. The information contained in the annual report provided for in the preceding section, and such other information as may be furnished to the board by employers in pursuance of the provisions of said section, shall

Such information not open to public nor available in court proceedings unless the board a party.

Information may be tabulated and published as statistics.

be for the exclusive use and information of said board in the discharge of its official duties, and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless the board is a party to such action or proceeding; but the information contained in said report may be tabulated and published by the department, in statistical form, for the use and information of other state departments and the public. Any person in the employ of the board who shall divulge any information secured by him in respect to the transactions, property or business of any company, firm, corporation, person, association, co-partnership or public utility to any person other than the members of the board, while acting as an employe of the board, shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), and shall thereafter be disqualified from holding any appointment or employment with the board.

Penalty for divulging information secured as an employe.

Section 1465-53.

Classification of occupations and fixing rates.

SECTION 6. The state liability board of awards shall classify occupations with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total payroll and number of employes in each of said classes of occupation sufficiently large to provide an adequate fund for the compensation provided for in this act, and to maintain a state insurance fund from year to year.

Section 1465-54.

Lowest rate consistent with solvent state insurance fund and maintaining reasonable surplus.

SECTION 7. It shall be the duty of the state liability board of awards, in the exercise of the powers and discretion conferred upon it in the preceding section, ultimately to fix and maintain, for each class of occupation, the lowest possible rates of premium consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury and death that it may authorize to be paid from the state insurance fund for the benefit of injured and the dependents of killed employes; and, in order that said object may be accomplished, the board shall observe the following requirements in classifying occupations and fixing the rates of premium for the risks of the same:

Requirements in classifying occupations and fixing rates of premium; account.

1. It shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries, and the disbursements on account of injuries and death of employes thereof, and it shall also keep an account of the money received from each individual employer and the amount disbursed from the state insurance fund on account of injuries and death of the employes of such employer.

Surplus.

2. Ten per cent. of the money that has heretofore been paid into the state insurance fund and ten per cent. of all that may hereafter be paid into such fund shall be set aside for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars ($100,000.00) after which time the sum of five per cent.

of all the money paid into the state insurance fund shall be credited to such surplus fund, until such time as, in the judgment of the board, such surplus shall be sufficiently large to guarantee a state insurance fund from year to year.

Readjustment of rates.

3. On the first day of July, 1914, and semi-annually thereafter, a readjustment of the rates shall be made for each of the several classes of occupation or industry which, in the judgment of the board, have developed an average loss ratio, in accordance with the experience of the board in the administration of the law as shown by the accounts kept as provided herein.

Reduction of rate.

4. Should any such accounting show a balance remaining to the credit of any class of occupation or industry, after the above-mentioned amounts have been credited to the surplus fund and after the payment of all awards for injury or death lawfully chargeable against the same, the premium rate for such class shall be reduced; and, each individual member of such class, who has been a subscriber to the state insurance fund for a period of six months or longer prior to the time of such readjustment, and whose premium or premiums so paid to the fund exceeds the amount of the disbursements from the fund on account of injuries or death to his employes during such period, shall be entitled to a credit on the installment or installments of premium next due from him, the amount of which credit shall be such proportion of said balance as the amount of his prior paid premiums sustains to the whole amount of said premiums paid by the class to which he belongs since the last readjustment of rates.

Section 1465-55.

Rules and regulations relative to the collection and disbursement of fund.

SECTION 8. The state liability board of awards shall adopt rules and regulations with respect to the collection, maintenance and disbursement of the state insurance fund; one of which rules shall provide that in the event the amount of premiums collected from any employer at the beginning of any period of six months is ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payments as a basis, that an adjustment of the amount of such premium shall be made at the end of such six months period and the actual amount of such premium shall be determined in accordance with the amount of the actual expenditure of wages for said period; and, in the event such wage expenditure for said period is less than the amount on which such estimated premium was collected, then such employer shall be entitled to receive a refunder from the state insurance fund of the difference between the amount so paid by him and the amount so found to be actually due, or to have the amount of such difference credited on succeeding premium payments at his option, and should such actual premium, when ascertained as aforesaid exceed in amount the premium so paid by such employer at the beginning of such six months' period, such employer

Refunder.

shall immediately upon being advised of the true amount of such premium due, forthwith pay to the treasurer of state an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of said six months' period.

Section 1465-56. Custodian of fund.

SECTION 9. The treasurer of state shall be the custodian of the state insurance fund and all disbursements therefrom shall be paid by him upon vouchers authorized by the state liability board of awards and signed by any two members of the board; or, such vouchers may bear the fac-simile signatures of the board members printed thereon, and the signature of the chief of the auditing department.

Section 1465-57. Deposit of funds not required for immediate use.

SECTION 10. The treasurer of state is hereby authorized to deposit any portion of the state insurance fund not needed for immediate use, in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by such treasurer; and all interest earned by such portion of the state insurance fund as may be deposited by the state treasurer in pursuance of authority herein given, shall be collected by him and placed to the credit of such fund.

Section 1465-58. Investment of surplus or reserve fund.

SECTION 11. The state liability board of awards shall have the power to invest any of the surplus or reserve belonging to the state insurance fund in bonds of the United States, the state of Ohio, or of any county, city, village or school district of the state of Ohio, at current market prices for such bonds; provided that such purchase be authorized by a resolution adopted by the board and approved by the governor; and it shall be the duty of the boards or officers of the several taxing districts of the state in the issuance and sale of bonds of their respective taxing districts, to offer in writing to the state liability board of awards, prior to advertising the same for sale, all such issues as may not have been taken by the trustees of the sinking fund of the taxing district so issuing such bonds; and said board shall, within ten days after the receipt of such written offer either accept the same and purchase such bonds or any portion thereof at par and accrued interest, or reject such offer in writing; and all such bonds so purchased forthwith shall be placed in the hands of the treasurer of state, who is hereby designated as custodian thereof, and it shall be his duty to collect the interest thereon as the same becomes due and payable, and also the principal thereof, and to pay the same, when so collected, into the state insurance fund. The treasurer of state shall honor and pay all vouchers drawn on the state insurance fund for the payment of such bonds when signed by any two members of the board, upon delivery of said bonds to him when there is attached to such voucher a certified copy of such resolution of the board authorizing the purchase of such bonds; and the board may sell any of said bonds upon like resolution, and the proceeds thereof shall be paid

Duty of boards and officers in taxing districts, relative to sale of bonds.

When vouchers shall be honored in payment of bonds.

by the purchaser to the treasurer of state upon delivery to him of said bonds by the treasurer.

Section 1465-59. SECTION 12. The treasurer of state shall give a separate and additional bond in such amount as may be fixed by the governor, and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the state insurance fund. Additional bond.

Section 1465-60. SECTION 13. The following shall constitute employers subject to the provisions of this act: Employers subject to the provisions of this act.

1. The state and each county, city, township, incorporated village and school district therein.

2. Every person, firm, and private corporation including any public service corporation that has in service five or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express, or implied, oral or written.

Section 1465-61. SECTION 14. The terms "employe," "workman" and "operative" as used in this act, shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein. Provided that nothing in this act shall apply to policemen or firemen in cities where policemen's and firemen's pension funds are now or hereafter may be established and maintained by municipal authority under existing laws. "Employe," "workman" and "operative" defined. Exception.

2. Every person in the service of any person, firm or private corporation, including any public service corporation employing five or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work for hire under the laws of the state, but not including any person whose employment is but casual, or not in the usual course of trade, business, profession or occupation of his employer.

Section 1465-62. SECTION 15. Every employer mentioned in subdivision one of section thirteen hereof, shall contribute to the state insurance fund in proportion to the annual expenditure of money by such employer for the service of persons described in subdivision one of section fourteen hereof, the amount of such payments and the method of making the same to be determined as hereinafter provided. Contribution by state, county, city, township, etc.

Section 1465-63. SECTION 16. The amount of money to be contributed by the state itself, and by each county, city, incorporated village, school district or other taxing district of the state shall be, unless otherwise provided by law, a sum equal to one percentum of the amount of money expended by the state and for each county, city, incorporated village, school Amount to be contributed.

district or other taxing district respectively during the next preceding fiscal year for the service of persons described in subdivision one of section fourteen hereof.

Section 1465-64. When warrant shall be drawn and payment made to credit of fund.

SECTION 17. In the month of January in the years 1914 and 1915, the auditor of state shall draw his warrant on the treasurer of state, in favor of said treasurer as custodian of the state insurance fund, and for deposit to the credit of said fund, for a sum equal to one percentum of the amount of money expended by the state during the last preceding fiscal year, for the service of persons described in subdivision one of section fourteen hereof, which said sums are hereby appropriated and made available for such payments; and thereafter in the month of January of each year, such sums of money shall in like manner be paid into the state insurance fund as may be provided by law; and it shall be the duty of the state liability board of awards to communicate to the general assembly on the first day of each regular session thereof, an estimate of the aggregate amount of money necessary to be contributed by the state during the two years next ensuing as its proper portion of the state insurance fund.

Section 1465-65. Annual list for each county showing amount expended by and amount due from taxing districts.

SECTION 18. In the month of December of each year, the auditor of state shall prepare a list for each county of the state, showing the amount of money expended by each township, city, village, school district or other taxing district therein for the service of persons described in subdivision one of section fourteen hereof, during the fiscal year last preceding the time of preparing such lists; and shall file a copy of each such list with the auditor of the county for which such list was made, and copies of all such lists with the treasurer of state. Such lists shall also show the amount of money due from the county itself, and from each city, township, village, school district and other taxing district thereof, as its proper contribution to the state insurance fund, and the aggregate sum due from the county and such taxing districts located therein.

Section 1465-66. Annual payment by county to credit of fund.

SECTION 19. In January of each year following the filing with him of the lists mentioned in the last preceding section hereof, beginning with January, 1914, the auditor of each county shall issue his warrant in favor of the treasurer of state of Ohio on the county treasurer of his county, for the aggregate amount due from such county and from the taxing districts therein, to the state insurance fund, and the county treasurer shall pay the amount called for by such warrant from the county treasury, and the county auditor shall charge the amount so paid to the county itself and the several taxing districts therein as shown by such lists; and the treasurer of state shall, immediately upon receiving such money, convert the same into the state insurance fund.

Section 1465-67. SECTION 20. In February of each year the treasurer of state shall certify to the state liability board of awards the amount of money that has been paid to him for credit

to the state insurance fund as provided in the foregoing sections and the amount paid by the state itself and by each county, city, incorporated village or school district therein, and at the same time shall certify to the board the names of such as may have made default in the payments hereinbefore provided and the respective amounts for which they are in default. When any default is made in the payment of the sums hereinbefore required to be contributed to the state insurance fund, or when any official fails, neglects or refuses to perform any act or acts required to be performed by him with reference to the making of such payments, it shall be the duty of the state liability board of awards forthwith to institute the proper proceedings in court to compel such payment or payments to be made.

Annual certificate of treasurer to board of amount credited to fund.

Duty of board in case of default in payment.

The state liability board of awards shall keep a separate account of the money paid into the state insurance fund by the state and its political subdivisions as hereinbefore provided and the disbursements made therefrom on account of injuries to public employes.

Account of its and disbursements.

Section 1465-68. SECTION 21. Every employe mentioned in subdivision one of section fourteen hereof, who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on or after January 1st, 1914, shall be paid such compensation out of the state insurance fund for loss sustained on account of such injury or death as is provided in the case of other injured or killed employes, and shall be entitled to receive such medical, nurse and hospital services and medicines, and such amount of funeral expenses as are payable in the case of other injured or killed employes.

When fund available.

Every employe mentioned in subdivision two of section fourteen hereof, who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on and after January 1st, 1914, shall be entitled to receive, either directly from his employer as provided in section twenty-two hereof, or from the state insurance fund, such compensation for loss sustained on account of such injury or death, and such medical, nurse and hospital services and medicines, and such amount of funeral expenses in case of death as is provided by sections thirty-two to forty inclusive of the act.

Section 1465-69. SECTION 22. Except as hereinafter provided, every employer mentioned in subdivision two of section thirteen hereof shall, in the month of January, 1914, and semi-annually thereafter, pay into the state insurance fund the amount of premium determined and fixed by the state liability board of awards for the employment or occupation of such employer the amount of which premium to be so paid by each such employer to be determined by the classifications, rules and rates made and published by the board;

Time of payment by employer of amount of premium.

and such employer shall semi-annually thereafter pay such further sum of money into the state insurance fund as may be ascertained to be due from him by applying the rules of the board, and a receipt or certificate certifying that such payment has been made shall immediately be mailed to such employer by the state liability board of awards, which receipt or certificate, attested by the seal of the board shall be prima facie evidence of the payment of such premium.

Receipt of payment.

Provided, however, that as to all employers who are subscribers to the state insurance fund at the time of the taking effect of this act, or who may before January 1st, 1914, elect to become subscribers thereto, the foregoing provisions for the payment of such premiums in the month of January, 1914, and semi-annually thereafter shall not apply, but such subsequent semi-annual premiums shall be paid by such employers from time to time upon the expiration of the respective periods for which payments into the fund have been made by them. And provided further, that such employers who will abide by the rules of the state liability board of awards and as may be of sufficient financial ability or credit to render certain the payment of compensation to injured employes or to the dependents of killed employes, and the furnishing of medical, surgical, nursing and hospital attention and services and medicines, and funeral expenses equal to or greater than is provided for in this act, or such employers as maintain benefit funds or departments or jointly with other employers maintain mutual associations of such said financial ability or credit, to which their employes are not required or permitted directly or indirectly to contribute, providing for the payment of such compensation and the furnishing of such medical, surgical, nursing and hospital services and attention and funeral expenses, may, upon a finding of such facts by the state liability board of awards elect to pay individually or from such benefit fund department or association such compensation, and furnish such medical, surgical, nursing and hospital services and attention and funeral expenses directly to such injured or the dependents of such killed employes; and the state liability board of awards may require such security or bond from said employers as it may deem proper, adequate and sufficient to compel, or secure to such injured employes, or to the dependents of such employes as may be killed, the payment of the compensation and expenses herein provided for, which shall in no event be less than that paid or furnished out of the state insurance fund, in similar cases, to injured employes or to the dependents of killed employes, whose employers contribute to said fund; and said board shall make and publish rules and regulations governing the mode and manner of making application and the nature and extent of the proof required to justify such finding of facts by the board as to permit such election by such employers,

Exceptions as to certain employers.

Security or bond may be required.

Rules and regulations governing mode of proof.

which rules and regulations shall be general in their applications, one of which rules shall provide that all employers electing directly to compensate their injured and the dependents of their killed employes as hereinbefore provided, shall pay into the state insurance fund such amount or amounts as are required to be credited to the surplus in paragraph two of section seven hereof.

Power of board to change or modify its findings.

The state liability board of awards may at any time change or modify its finding of facts herein provided for, if in its judgment such action is necessary or desirable to secure or assure a strict compliance with all the provisions of this act in reference to the payment of compensation and the furnishing of medical, nurse, and hospital services and medicines and funeral expenses to injured and the dependents of killed employes.

Section 1465-70.

Employers complying with act not liable in damages.

SECTION 23. Employers who comply with the provisions of the last preceding section shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injury or death of any employe, wherever occurring, during the period covered by such premium so paid into the state insurance fund, or during the interval of time in which such employer is permitted to pay such compensation direct to his injured or the dependents of his killed employes as herein provided.

Section 1465-71.

Employer paying to fund, employing less than five, not liable in damages.

SECTION 24. Any employer who employs less than five workmen or operatives regularly in the same business, or in or about the same establishment, who shall pay into the state insurance fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injuries or death of any such employes, wherever occurring, during the period covered by such premiums, provided the injured employe has remained in his service with notice that his employer has paid into the state insurance fund the premiums provided by this act; the continuation in the service of such employer with such notice shall be deemed a waiver by the employe of his right of action as aforesaid.

Posting of notices by such employer.

Each such employer paying the premiums provided by this act into the state insurance fund, or electing directly to pay compensation to his injured, or the dependents of his killed employes as provided in section twenty-two hereof, shall post in conspicuous places about his place or places of busines typewritten or printed notices stating the fact that he has made such payment, or that he has complied with the provisions of said section twenty-two hereof and all of the rules and regulations of the state liability board of awards made in pursuance thereof, and has been authorized by said board directly to compensate such said employes or dependents; and the same, when so posted, shall constitute sufficient notice to his employes of the fact that he has made such payment, or that he has complied with such elective provision of section twenty-two; and of any subsequent payments he may make after such notices have been posted.

Section 1465-72. Disbursement of fund by board.

SECTION 25. The state liability board of awards shall disburse the state insurance fund to such employes of employers as have paid into said fund the premiums applicable to the classes to which they belong, who have been injured in the course of their employment, wheresoever such injuries have occurred, and which have not been purposely self-inflicted, or to their dependents in case death has ensued. All employers electing directly to compensate their injured employes, in compliance with this act, shall pay to such injured employes, or to the dependents of employes who have been killed in the course of their employment, unless such injury or death of such employe has been purposely self-inflicted, the compensation, and shall furnish such medical, surgical, nurse and hospital care and attention or funeral expenses as would have been paid and furnished by virtue of this act under a similar state of facts, by the state liability board of awards out of the state insurance fund, in case said employer had paid the premium provided by this act, into said fund.

Payment by employers directly compensating injured employes.

Provided, however, that if any rule or regulation of such employer so directly compensating his employes, shall provide for or authorize the payment of greater compensation or more complete or extended medical care, nursing, surgical and hospital attention or funeral expenses to such injured employes, or to the dependents of such employes as may be killed, such employer shall be required to pay to such employes, or to the dependents of such as are killed, the amount of compensation and furnish such medical care, nursing, surgical and hospital attention or funeral expenses provided by his said rules and regulations.

And such payment or payments to such injured employes, or to their dependents in case death has ensued, shall be in lieu of any and all rights of action whatsoever against the employer of such injured or killed employes.

Section 1465-73. Employer failing to comply with law, liable for damages and shall not avail himself of common law defenses.

SECTION 26. Employers mentioned in subdivision two of section thirteen hereof, who shall fail to comply with the provisions of section twenty-two hereof, shall not be entitled to the benefits of this act during the period of such non-compliance, but shall be liable to their employes for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or employes, and also to the personal representatives of such employes where death results from such injuries, and in such action the defendant shall not avail himself or itself of the following common law defenses:

The defense of the fellow-servant rule, the defense of the assumption of risk or the defense of contributory negligence.

And such employers shall also be subject to the provisions of the two sections next succeeding.

Section 1465-74.

SECTION 27. Any employe whose employer has failed to comply with the provisions of section twenty-two hereof,

who has been injured in the course of his employment, wheresoever such injury has occurred, and which was not purposely self-inflicted, or his dependents in case death has ensued, may, in lieu of proceeding against his employer by civil action in the courts, as provided in the last preceding section, file his application with the state liability board of awards for compensation in accordance with the terms of this act, and the board shall hear and determine such application for compensation in like manner as in other claims before the board; and the amount of the compensation which said board may ascertain and determine to be due to such injured employe, or to his dependents in case death has ensued, shall be paid by such employer to the person entitled thereto within ten days after receiving notice of the amount thereof as fixed and determined by the board; and in the event of the failure, neglect or refusal of the employer to pay such compensation to the person entitled thereto, within said period of ten days, the same shall constitute a liquidated claim for damages against such employer in the amount so ascertained and fixed by the board, which with an added penalty of fifty percentum, may be recovered in an action in the name of the state for the benefit of the person or persons entitled to the same. And any employe whose employer has elected to pay compensation to his injured, or to the dependents of his killed employes in accordance with the provisions of section twenty-two hereof, may, in the event of the failure of his employer to so pay such compensation or furnish such medical, surgical, nursing and hospital services and attention or funeral expenses, file his application with the state liability board of awards for the purpose of having the amount of such compensation and such medical, surgical, nursing and hospital services and attention or funeral expenses determined; and thereupon like proceedings shall be had before the board and with like effect as hereinbefore provided.

Employe may, in lieu of action for damages, file application for compensation with board.

Penalty upon failure to pay amount awarded within 10 days.

And the state liability board of awards shall adopt and publish rules and regulations governing the procedure before the board provided in this section, and shall prescribe forms of notices and the mode and manner of serving the same in all claims for compensation arising under this section. Any suit, action or proceeding brought against any employer under the provisions of this section, may be compromised by the board, or such suit, action or proceeding may be prosecuted to final judgment as in the discretion of the board may best subserve the interests of the persons entitled to receive such compensation.

Board shall adopt rules and regulations governing procedure.

Board may compromise suit or proceed to final judgment.

Section 1465-75. SECTION 28. If any employer shall default in any payment required to be made by him to the state insurance fund, the amount due from him shall be collected by civil action against him in the name of the state as plaintiff; and it shall be the duty of the state liability board of awards on the first Monday in February, 1914, and on

List of employers in default shall be certified to attorney general each month.

the first Monday of each month thereafter, to certify to the attorney general of the state the names and residences of all employers known to the board to be in default for such payments for a longer period than five days, and the amount due from each such employer, and it shall then be the duty of the attorney general forthwith to bring, or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due, and the same when collected, shall be paid into the state insurance fund, and such employer's compliance with the provisions of this act requiring payments to be made to the state insurance fund shall date from the time of the payment of said money so collected as aforesaid to the treasurer of state for credit to the state insurance fund.

Section 1465-76.

SECTION 29. But where a personal injury is suffered by an employe, or where death results to an employe from personal injury while in the employ of an employer in the course of employment, and such employer has paid into the state insurance fund the premium provided for in this act, or is authorized directly to compensate such employe or dependents by virtue of compliance with section twenty-two of this act, and in case such injury has arisen from the wilful act of such employer, or any of such employer's officers or agents, or from the failure of such employer or any of such employer's officers or agents to comply with any lawful requirement for the protection of the lives and safety of employes, then in such event, nothing in this act contained shall affect the civil liability of such employer, but such injured employe, or his legal representative in case death results from the injury, may, at his option, either claim compensation under this act or institute proceedings in the courts for his damage on account of such injury; and such employer shall not be liable for any injury to any employe or his legal representative in case death results, except as provided in this section; and in all actions authorized by this section the defendant shall be entitled to plead the defense of contributory negligence and the defense of the fellow-servant rule; and, in all cases determined in court as authorized by this section when a judgment is awarded the plaintiff, the court shall determine, fix and award the amount of fee or fees to be paid plaintiff's attorney or attorneys, any contract to the contrary notwithstanding.

Employer who has paid into insurance fund, is liable when injury or death arises from wilful act of employer, at the election of employe or representative.

Every employe, or his legal representative in case death results, who makes application for an award, or accepts compensation from an employer who elects, under section twenty-two of this act, directly to pay such compensation, waives his right to exercise his option to institute proceedings in any court, except as provided in section forty-three hereof. Every employe, or his legal representative in case death results, who exercises his option to institute proceedings in court as provided in this section, waives his right to any award, or direct payment of

Application for award or acceptance of compensation waives right of action.

compensation from his employer under section twenty-two hereof, as provided in this act.

Section 1465-77. SECTION 30. All judgments obtained in any action prosecuted by the board or by the state under the authority of this act shall have the same preference against the assets of the employer as is now or may hereafter be allowed by law on judgments rendered for claims for taxes.

Preference of judgments.

Section 1465-78. SECTION 31. No compensation shall be allowed for the first week after the injury is received, except the disbursement hereinafter authorized for medical, nurse and hospital services and medicines, and for funeral expenses.

No compensation for first week; exception.

Section 1465-79. SECTION 32. In case of temporary disability, the employe shall receive sixty-six and two-thirds per cent. of his average weekly wages so long as such disability is total, not to exceed a maximum of twelve dollars per week, and not less than a minimum of five dollars per week, unless the employe's wages shall be less than five dollars per week, in which event he shall receive compensation equal to his full wages; but in no case to continue for more than six years from the date of the injury, or to exceed three thousand, seven hundred and fifty dollars.

Compensation for temporary disability.

Period of continuance.

Section 1465-80. SECTION 33. In case of injury resulting in partial disability, the employe shall receive sixty-six and two-thirds per cent. of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of twelve dollars per week, or a greater sum in the aggregate than thirty-seven hundred and fifty dollars. In cases included in the following schedule, the disability in each case shall be deemed to continue for the period specified and the compensation so paid for such injury shall be as specified herein, to-wit:

Compensation for injuries resulting in partial disability.

For the loss of a thumb, 66 2-3% of the average weekly wages during sixty weeks.

Specifications of injuries and compensation fixed.

For the loss of a first finger, commonly called index finger, 66 2-3% of the average weekly wages during thirty-five weeks.

For the loss of a second finger, 66 2-3% of the average weekly wages during thirty weeks.

For the loss of a third finger, 66 2-3% of the average weekly wages during twenty weeks.

For the loss of a fourth finger, commonly known as the little finger, 66 2-3% of the average weekly wages during fifteen weeks.

The loss of the second, or distal phalange, of the thumb shall be considered to be equal to the loss of one-half of such thumb; the loss of more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third, or distal phalange, of any finger shall be considered to be equal to the loss of one-third of such finger.

The loss of the middle, or second phalange, of any finger shall be considered to be equal to the loss of two-thirds of such finger.

Specifications of injuries and compensation fixed.

The loss of more than the middle and distal phalanges of any finger shall be considered to be equal to the loss of the whole finger; provided, however, that in no case will the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bones of palm) for the corresponding thumb, finger, or fingers as above, add ten weeks to the number of weeks as above.

For ankylosis (total stiffness of) or contractures (due to scars or injuries) which makes the fingers more than useless, the same number of weeks apply to such finger or fingers (not thumb) as given above.

For the loss of a hand, 66 2-3% of the average weekly wages during one hundred and fifty weeks.

For the loss of an arm, 66 2-3% of the average weekly wages during two hundred weeks.

For the loss of a great toe, 66 2-3% of the average weekly wages during thirty weeks.

For the loss of one of the toes other than the great toe, 66 2-3% of the average weekly wages during ten weeks.

The loss of more than two-thirds of any toe shall be considered to be equal to the loss of the whole toe.

The loss of less than two-thirds of any toe shall be considered to be no loss;

For the loss of a foot, 66 2-3% of the average weekly wages during one hundred and twenty-five weeks.

For the loss of a leg, 66 2-3% of the average weekly wages during one hundred and seventy-five weeks.

For the loss of an eye, 66 2-3% of the average weekly wages during one hundred weeks.

The amounts specified in this clause are all subject to the limitation as to the maximum weekly amount payable as hereinbefore specified in this section.

Section 1465-81. Compensation in cases of permanent total disability.

SECTION 34. In cases of permanent total disability, the award shall be sixty-six and two-thirds per cent. of the average weekly wages, and shall continue until the death of such person so totally disabled, but not to exceed a maximum of twelve dollars per week and not less than a minimum of five dollars per week, unless the employe's average weekly wages are less than five dollars per week at the time of the injury, in which event he shall receive compensation in an amount equal to his average weekly wages.

The loss of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof, shall prima facie constitute total and permanent disability, to be compensated according to the provisions of this section.

Section 1465-82. Compensation when injury results in death.

SECTION 35. In case the injury causes death within the period of two years, the benefits shall be in the amounts and to the persons following:

1. If there be no dependents, the disbursements from the state insurance fund shall be limited to the expenses provided for in section forty-two hereof.

2. If there are wholly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent. of the average weekly wages, and to continue for the remainder of the period between the date of the death, and six years after the date of the injury, and not to amount to more than a maximum of thirty-seven hundred and fifty dollars, nor less than a minimum of one thousand five hundred dollars.

3. If there are partly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent. of the average weekly wages, and to continue for all or such portion of the period of six years after the date of the injury, as the board in each case may determine, and not to amount to more than a maximum of thirty-seven hundred and fifty dollars.

4. The following persons shall be presumed to be wholly dependent for support upon a deceased employe:

Who are dependents upon employe.

(A) A wife upon a husband with whom she lives at the time of his death.

(B) A child or children under the age of sixteen years (or over said age if physically or mentally incapacitated from earning) upon the parent with whom he is living at the time of the death of such parent.

Dependency in other cases determined by facts.

In all other cases, question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of such employe, but no person shall be considered as dependent unless a member of the family of the deceased employe, or bears to him the relation of husband or widow, lineal descendant, ancestor or brother or sister. The word "child" as used in this act, shall include a posthumous child, and a child legally adopted prior to the injury.

"Child" defined

Section 1465-83. SECTION 36. The benefits in case of death, shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents as may be determined by the board, which may apportion the benefits among the dependents in such manner as it may deem just and equitable. Payment to a dependent subsequent in right may be made, if the board deems it proper, and shall operate to discharge all other claims therefor. The dependent or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the finding and direction of the board.

Benefits shall be paid to whom.

In all cases of death where the dependents are a widow and one or more minor children, it shall be sufficient for the widow to make application to the board on behalf of herself and minor children; and in cases where all of the dependents are minors, the application shall be made by the guardian or next friend of such minor dependents.

Section 1465-84. SECTION 37. The average weekly wage of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits.

Basis upon which to compute benefits.

Section 1465-85. SECTION 38. It it is established that the injured employe was of such age and experience when injured as that under natural conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wage.

Section 1465-86. Powers and jurisdiction of board continuing.

SECTION 39. The powers and jurisdiction of the board over each case shall be continuing, and it may from time to time make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion may be justified.

Section 1465-87. Periodical benefits may be commuted to lump sum.

SECTION 40. The board, under special circumstances, and when the same is deemed advisable, may commute periodical benefits to one or more lump sum payments.

Section 1465-88. Compensation exempt from attachment or execution.

SECTION 41. Compensation before payment shall be exempt from all claims or creditors and from any attachment or execution, and shall be paid only to such employes or their dependents.

Section 1465-89. Amounts provided in addition to compensation.

SECTION 42. In addition to the compensation provided for herein, the board shall disburse and pay from the state insurance fund, such amounts for medical, nurse and hospital services and medicine as it may deem proper, not, however, in any instance, to exceed the sum of two hundred dollars; and, in case death ensues from the injury, reasonable funeral expenses shall be disbursed and paid from the fund in an amount not to exceed the sum of one hundred and fifty dollars, and the board shall have full power to adopt rules and regulations with respect to furnishing medical, nurse and hospital services and medicine to injured employes entitled thereto, and for the payment therefor.

Section 1465-90. Decisions of the board on all questions final. Exception.

SECTION 43. The board shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final. Provided, however, in case the final action of such board denies the right of the claimant to participate at all in such fund on the ground that the injury was self-inflicted or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claimant's right, then the claimant, within thirty (30) days after the notice of the final action of such board, may, by filing his appeal in the common pleas court of the county wherein the injury was inflicted, be entitled to a trial in the ordinary way, and be entitled to a jury if he demands it. In such a proceeding, the prosecuting attorney of the county, without additional compensation, shall represent the state liability board of awards, and he shall be notified by the clerk forthwith of the filing of such appeal.

Procedure in case of appeal.

Within thirty days after filing his appeal, the appellant shall file a petition in the ordinary form against such board as defendant, and further pleadings shall be had in said cause, according to the rules of civil procedure, and the court, or the jury, under the instructions of the court, if a jury is demanded, shall determine the right of the claim-

ant; and if they determine the right in his favor, shall fix his compensation within the limits under the rules prescribed in this act; and any final judgment so obtained shall be paid by the state liability board of awards out of the state insurance fund in the same manner as such awards are paid by such board.

Costs and attorney fees.

The cost of such proceeding, including a reasonable attorney's fee to the claimant's attorney to be fixed by the trial judge, shall be taxed against the unsuccessful party.

Error.

Either party shall have the right to prosecute error as in the ordinary civil cases.

Section 1465-91.

Board not bound by technical or formal rules in investigations.

SECTION 44. Such board shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided; but may make the investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this act.

Section 1465-92.

Compensation shall not be considered by jury on trial of any action.

SECTION 45. No provision of this act relating to the amount of compensation shall be considered by, or called to the attention of the jury on the trial of any action to recover damages as herein provided.

Section 1465-93.

Minor working at legal age considered sui juris.

SECTION 46. A minor working at an age legally permitted under the laws of this state, shall be deemed sui juris for the purposes of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman, but in the event of the award of a lump sum of compensation to such minor employe, such sum shall be paid only to the legally appointed guardian of such minor.

Section 1465-94.

Agreement to waive rights of compensation void.

SECTION 47. No agreement by an employe to waive his rights to compensation under this act shall be valid. No agreement by an employe to pay any portion of the premium paid by his employer into the state insurance fund shall be valid, and any employer who deducts any portion of such premium from the wages or salary of any employe entitled to the benefits of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars for each such offense.

Deduction of any portion of premium from wages of employe unlawful.

Section 1465-95.

Employe claiming compensation may be required to submit to medical examination.

SECTION 48. Any employe claiming the right to receive compensation under this act may be required by the board or its chief medical examiner, to submit himself for medical examination at any time and from time to time at a place reasonably convenient for such employe, and as may be provided by the rules of the board. If such employe refuses to submit to any such examination or obstructs the same, his right to have his claim for compensation considered, if his claim be pending before the board, or to receive any payments for compensation theretofore granted shall be suspended during the period of such refusal or obstruction.

Section 1465-96.

SECTION 49. All books, records and payrolls of the employers of the state, showing or reflecting in any way

Books, records and payrolls shall be open for inspection by the board or any of its assistants.

upon the amount of wage expenditure of such employers, shall always be open for inspection by the board or any of its traveling auditors, inspectors or assistants, for the purpose of ascertaining the correctness of the wage expenditure, the number of men employed, and such other information as may be necessary for the uses and purposes of the board in its administration of the law. Refusal on the part of any employer to submit his books, records and payrolls for the inspection of any member of the board or traveling auditor, inspector or assistant presenting written authority from the board, shall subject such employer to a penalty of one hundred dollars ($100.00) for each such offense, to be collected by civil action in the name of the state, and paid into the state insurance fund to become a part thereof.

Penalty for refusal to submit books, etc., for inspection.

Section 1465-97.

Penalty for misrepresentation as to amount of payroll.

SECTION 50. Any employer who misrepresents to the board the amount of payroll upon which the premium under this act is based, shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the state under this section shall be enforced in a civil action in the name of the state, and all sums collected under this section shall be paid into the state insurance fund.

Section 1465-98.

Act applies to employers and employes engaged in intrastate and interstate and foreign commerce.

SECTION 51. The provisions of this act shall apply to employers and their employes engaged in intrastate and also in interstate and foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, and then only when such employer and any of his workmen working only in this state, with the approval of the state liability board of awards, and so far as not forbidden by any act of congress, voluntarily accept the provisions of this act by filing written acceptances, which, when filed with and approved by the board, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms, during the period or periods for which the premiums herein provided have been paid. Payment of premium shall be on the basis of the payroll of the workmen who accept as aforesaid.

Section 1465-99.

Employer shall keep record of all injuries to his employes and report to state board.

SECTION 52. Every employer of the state shall keep a record of all injuries, fatal or otherwise, received by his employes in the course of their employment. Within a week after the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing to the state liability board of awards upon blanks to be procured from the board for that purpose. Such report shall contain the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employe, and shall state the time, the nature and cause of injury

and such other information as may be required by the board. Any employer who refuses or neglects to make any report required by this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars ($500.00) for such offense.

Penalty for refusal to make report.

Section 1465-100. SECTION 53. Upon the request of the board, the attorney general, or under his direction, the prosecuting attorney of any county shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this act, or for the recovery of any money due the state insurance fund, or any penalty herein provided for, arising within the county in which he was elected, and shall defend in like manner all suits, actions or proceedings brought against the board or the members thereof in their official capacity.

Attorney general or prosecuting attorney shall institute and prosecute actions and defend suits against the board.

Section 1465-101. SECTION 54. All contracts or agreements entered into by any employer, the purpose of which is to indemnify him from loss or damage on account of the injury of such employe by accidental means or on account of the negligence of such employer or such employer's officer, agent or servant, shall be absolutely void, unless such contract or agreement shall specifically provide for the payment to such injured employe of such amounts for medical, nurse and hospital services and medicines, and such compensation as is provided by this act for injured employes; and in the event of death shall pay such amounts as are herein provided for funeral expenses and for compensation to the dependents of those partially dependent upon such employe; and no such contract shall agree, or be construed to agree, to indemnify such employer, other than hereinbefore designated, for any civil liability for which he may be liable on account of the injury to his employe by the wilful act of such employer, or any of such employer's officers or agents, or the failure of such employer, his officers or agents, to observe any lawful requirement for the safety of employes.

Contracts for the purpose of indemnifying employer from loss or damage on account of injury of employe are void.

Section 1465-102. SECTION 55. The board may make necessary expenditures to obtain statistical and other information to establish the classes provided for in section six hereof. The salaries and compensation of the members of the board, of the secretary and all actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers and other assistants, and all other expenses of the board herein authorized, including the premium to be paid by the state treasurer for the bond to be furnished by him, shall be paid out of the state treasury upon vouchers signed by two of the members of such board and presented to the auditor of state, who shall issue his warrant therefor as in other cases.

Expenditure for statistical information.

Salaries and expenses shall be paid out of state treasury.

Section 1465-103. SECTION 56. Annually on or before the 15th day of December, such board, under the oath of at least two of its members, shall make a report to the governor for the

Annual report of the board to the governor.

preceding fiscal year, which shall include a statement of the number of awards made by it, and a general statement of the causes of accidents leading to the injuries for which the awards were made, a detailed statement of the disbursements from the expense fund, and the condition of its respective funds, together with any other matters which the board deems proper to call to the attention of the governor, including any recommendations it may have to make, and it shall be the duty of the board from time to time to publish and distribute among employers and employes, such general information as to the business transacted by the department as in its judgment may be useful.

Section 1465-104. Publication and distribution of classifications, rates and rules of procedure.

SECTION 57. The board shall cause to be printed in proper form for distribution to the public its classifications, rates, rules, regulations and rules of procedure, and shall furnish the same to any person upon application therefor, and the fact that such classifications, rates, rules, regulations and rules of procedure are printed ready for distribution to all who apply for the same, shall be a sufficient publication of the same as required by this act.

Section 1465-105. Injunction shall not issue suspending any classification or rate adopted.

SECTION 58. No injunction shall issue suspending or restraining any order, classification or rate adopted by the board, or any action of the auditor of state, treasurer of state, attorney general, or the auditor or treasurer of any county, required to be taken by them or any of them by any of the provisions of this act; but nothing herein shall effect any right or defense in any action brought by the board or the state in pursuance of authority contained in this act.

Section 1465-106. Unconstitutionality of any provision shall not affect the whole or any other part.

SECTION 59. Should any section or provision of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole or any part thereof other than the part so decided to be unconstitutional.

Repeals.

SECTION 60. That sections 1465-42, 1465-43, 1465-45, 1465-46, 1465-53, 1465-54, 1465-55, 1465-56, 1465-58, 1465-62, 1465-63, 1465-64, 1465-65, 1465-66, 1465-67, 1465-68, 1465-69, 1465-70, 1465-71, 1465-72, 1465-73, 1465-74, 1465-75, 1465-76, 1465-77, 1465-78 and 1465-79 of the General Code are heby repealed; and sections 1465-57, 1465-59, 1465-60 and 1465-61 of the General Code are hereby repealed, such repeal to take effect on January 1st, 1914.

C. L. SWAIN,
Speaker of the House of Representatives.
HUGH L. NICHOLS,
President of the Senate.

Passed February 26th, 1913.
Approved March 14th, 1913.

JAMES M. COX,
Governor.

Filed in the office of the Secretary of State March 17th, 1913. 42 G.

The sectional numbers on the margin hereof are designated as provided by law.
TIMOTHY S. HOGAN,
Attorney General.

[Senate Bill No. 26.]

AN ACT

Regulating the soliciting of money, or other thing of value, of persons confined in a penal or correctional institution of the state of Ohio.

Be it enacted by the General Assembly of the State of Ohio:

Section 12838-1. Soliciting money or thing of value from persons confined in penal institutions, unlawful.

SECTION 1. Whoever, directly or indirectly, procures or solicits with intent to procure, or extorts any money or other thing of value of any person, or persons, confined in any penitentiary, jail, workhouse, calaboose, or other penal or correctional institution within this state, or in the custody of any officer of the law, or from any other person or persons, for or in behalf of one so confined or in custody, upon or by virtue of any offer, promise or agreement, verbal or written, to secure, or attempt to secure for such person or persons so confined, a release or discharge therefrom, or a pardon, parole or modification of sentence, unless originally requested so to do by such person or persons so confined, shall be fined not exceeding five hundred dollars, or imprisoned in the county jail or workhouse not exceeding six months, or both. Penalty.

The sectional number on the margin hereof is designated as provided by law.
TIMOTHY S. HOGAN,
Attorney General.

C. L. SWAIN,
Speaker of the House of Representatives.
HUGH L. NICHOLS,
President of the Senate.

Passed March 5th, 1913.
Approved March 14th, 1913.

JAMES M. COX,
Governor.

Filed in the office of the Secretary of State March 17th, 1913. 43 G.

[Senate Bill No. 67.]

AN ACT

To amend section 3637 of the General Code, relating to the enumeration of powers of municipalities as to signs, electricity and plumbing.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 3637 of the General Code be amended to read as follows:

Section 3637. Erection of fences, signs; construction and repair of wires, poles, plants; licensing, house movers, electrical contractors, plumbers, etc.

Sec. 3637. To regulate the erection of fences, billboards, signs and other structures, within the corporate limits, and to provide for the removal and repair of, insecure billboards, signs and other structures; to regulate the construction and repair of wires, poles, plants and all equipment to be used for the generation and application of elec-

ber 1, 1914. The governor shall as soon thereafter as practicable transmit a copy of such report to both branches of the general assembly.

Equipment and supplies.

SECTION 3. That the supervisor of public printing and the secretary of state are hereby authorized and directed to furnish such committee, on requisition, with all proper supplies, stationery and equipment necessary for the proper discharge of their duties.

Expenses.

SECTION 4. No member of such committee shall be compensated for his service, but each member and the secretary shall be paid his necessary and proper traveling expenses incurred in attending meetings, procuring information or in performing other duties incidental to its work. All the expenses of the committee and secretary shall be paid by vouchers issued by the chairman of such committee upon the auditor of the state who shall draw warrants therefor upon the treasurer of the state.

SECTION 5. There is hereby appropriated out of any moneys in the state treasury to the credit of the general fund, not otherwise appropriated, the sum of one thousand dollars to be used in carrying out the purposes of this act.

This act is special and does not require a code number.
TIMOTHY S. HOGAN, *Attorney General.*

C. L. SWAIN,
Speaker of the House of Representatives.
W. A. GREENLUND,
President of the Senate.

Passed February 6th, 1914.
Approved February 17th, 1914.

JAMES M. COX,
Governor.

Filed in the office of the Secretary of State February 20th, 1914. 41 S.

[Senate Bill No. 28.]

AN ACT.

To amend Section 29 of an act of the General Assembly of Ohio passed February, 1913, approved March 14, 1913, and filed in the office of the secretary of state of Ohio, March 18, 1913, entitled, "An act to further define the powers, duties and jurisdiction of the state liability board of awards with reference to the collection, maintenance and disbursement of the state insurance fund for the benefit of injured, and the dependents of killed employees and requiring contribution thereto by employers, and to repeal sections 1465-42, 1465-43, 1465-45, 1465-46, 1465-53, 1465-54, 1465-55, 1465-56, 1465-57, 1465-58, 1465-59, 1465-60, 1465-61, 1465-62, 1465-63, 1465-64, 1465-65, 1465-66, 1465-67, 1465-68, 1465-69, 1465-70, 1465-71, 1465-72, 1465-73, 1465-74, 1465-75, 1465-76, 1465-77, 1465-78, 1465-79 of the General Code," (O. L. Vol. 103, p. 72).

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 29 of an act entitled, "an act to further define the powers, duties and jurisdiction of the state liability board of awards with reference to the col-

lection, maintenance and disbursement of the state insurance fund for the benefit of injured, and the dependents of killed employees and requiring contribution thereto by employers, and to repeal sections 1465-42, 1465-43, 1465-45, 1465-46, 1465-53, 1465-54, 1465-55, 1465-56, 1465-57, 1465-58, 1465-59, 1465-60, 1465-61, 1465-62, 1465-63, 1465-64, 1465-65, 1465-66, 1465-67, 1465-68. 1465-69, 1465-70, 1465-71, 1465-72, 1465-73, 1465-74, 1465-75, 1465-76, 1465-77, 1465-78, 1465-79 of the General Code," passed February 26th, 1913, approved by the Governor March 4th, 1913, and filed in the office of the secretary of state March 17, 1913, be amended to read as follows:

Section 1465-76.

Sec. 29. But where a personal injury is suffered by an employee, or where death results to an employee from personal injury while in the employ of an employer in the course of employment, and such employer has paid into the state insurance fund the premium provided for in this act, or is authorized directly to compensate such employee or dependents by virtue of compliance with section 22 of this act, and in case such injury has arisen from the wilful act of such employer or any of such employer's officers or agents, or from the failure of such employer or any of such employer's officers or agents to comply with any lawful requirement for the protection of the lives and safety of employees, then in such event, nothing in this act contained shall affect the civil liability of such employer, but such injured employee, or his legal representative in case death results from the injury, may, at his option, either claim compensation under this act or institute proceedings in the courts for his damage on account of such injury; and such employer shall not be liable for any injury to any employee or his legal representative in case death results, except as provided in this section; and in all actions authorized by this section, the defendant shall be entitled to plead the defense of contributory negligence and the defense of the fellow servant rule; and, in all cases determined in court as authorized by this section, when a judgment is awarded the plaintiff, the court shall determine, fix and award the amount of fee or fees to be paid plaintiff's attorney or attorneys, any contract to the contrary notwithstanding.

Employer is liable who has paid into insurance fund when injury or death arises from wilful act of employer, at the election of employee or representative.

Every employee, or his legal representative in case death results, who makes application for an award, or accepts compensation from an employer who elects, under section 22 of this act, directly to pay such compensation waives his right to exercise his option to institute proceedings in any court, except as provided in section 43 hereof. Every employee, or his legal representative in case death results, who exercises his option to institute proceedings in court, as provided in this section, waives his right to any award, or direct payment of compensation from his employer under section 22 hereof, as provided in this act.

Application for award or acceptance of compensation waives right of action.

The term "wilful act," as employed in this section, shall be construed to mean an act done knowingly and purposely with the direct object of injuring another.

Repeal.

SECTION 2. That original section 29 of said act of the General Assembly of Ohio, passed February 26th, 1913, approved March 18th, 1913, filed in the office of the secretary of state March 14th, 1913, entitled "an act to further define the powers, duties and jurisdiction of the state liability board of awards with reference to the collection, maintenance and disbursement of the state insurance fund for the benefit of injured, and the dependents of killed employees and requiring contribution thereto by employers, and to repeal sections 1465-42, 1465-43, 1465-45, 1465-46, 1465-53, 1465-54, 1465-55, 1465-56, 1465-57, 1465-58, 1465-59, 1465-60, 1465-61, 1465-62, 1465-63, 1465-64, 1465-65, 1465-66, 1465-67, 1465-68, 1465-69, 1465-70, 1465-71, 1465-72, 1465-73, 1465-74, 1465-75, 1465-76, 1465-77, 1465-78, 1465-79, of the General Code," be and the same is hereby repealed.

The sectional number on the margin hereof is designated as provided by law. TIMOTHY S. HOGAN, *Attorney General.*

C. L. SWAIN,
Speaker of the House of Representatives.

W. A. GREENLUND,
President of the Senate.

Concurred February 6th, 1914.
Approved February 17th, 1914.

JAMES M. COX,
Governor.

Filed in the office of the Secretary of State February 20th, 1914. 42 G.

[House Bill No. 36.]

AN ACT

To authorize the county commissioners of Paulding county, Ohio, to reimburse the township trustees of Benton township in such county in a sum not to exceed thirteen hundred and seven dollars and thirty-seven cents for money spent in repairing culverts damaged by the flood of 1913.

Be it enacted by the General Assembly of the State of Ohio:

County commissioners Paulding county authorized to pay Benton township.

SECTION 1. The board of county commissioners of Paulding county, Ohio, is hereby authorized and empowered to appropriate and order paid to the township trustees of Benton township, Paulding county, Ohio, out of any moneys in the county bridge fund not otherwise appropriated, a sum not to exceed thirteen hundred and seven dollars and thirty-seven cents. Upon such appropriation by the commissioners the county auditor is hereby authorized and directed to draw his warrant on the county

This act is special and does not require a code number. TIMOTHY S. HOGAN, *Attorney General.*

treasurer for such amount in favor of the treasurer of Benton township, Paulding county. C. L. SWAIN,
Speaker of the House of Representatives.
W. A. GREENLUND,
President of the Senate.

Passed February 6th, 1914.
Approved February 17th, 1914.
JAMES M. COX,
Governor.

Filed in the office of the Secretary of State February 20th, 1914. 43 S.

[House Bill No. 31.]

AN ACT

Relative to appropriating money for the assistance of weak school districts.

Be it enacted by the General Assembly of the State of Ohio:

Appropriation for aid of weak school districts.

SECTION 1. That there be and is hereby appropriated from any moneys raised or coming into the state treasury for the support of the common schools and not otherwise appropriated, to assist in the maintenance of weak school districts, the balance of former appropriation and the sum of eighty-five thousand dollars which shall be distributed by the auditor of state in accordance with the provisions of the act passed April 2, 1906, as amended April 18, 1913.

This act is special and does not require a code number. TIMOTHY S. HOGAN, *Attorney General.*

C. L. SWAIN,
Speaker of the House of Representatives.
W. A. GREENLUND,
President of the Senate.

Passed February 6th, 1914.
Approved February 17th, 1914.
JAMES M. COX,
Governor.

Filed in the office of the Secretary of State February 20th, 1914. 44 S.

[House Bill No. 35.]

AN ACT

To authorize the state armory board to accept a gift of land in the city of Marietta, Ohio, as the site of an armory building, and to erect thereon an armory.

WHEREAS, the state armory board desires to erect an armory building in the city of Marietta, Ohio, and has caused plans and specifications for such building to be made, and land in said city suitable for the erection of such armory building has been offered to the state of Ohio and said state armory board as a gift, and a deed conveying said land to the state of Ohio has been duly executed and tendered to

Ballots.

to be counted under the provisions of this act; separate ballots shall be provided and so printed as to permit vote for or against each ordinance or measures submitted in accordance with the order of the petition or petitions demanding such submission and for or against each ordinance or measure proposed by initiative petition and all ordinances and measures passed by council or ordinances and measures proposed by initiative petition, so submitted, shall be indicated on the ballots by the title of such ordinance or measure passed by council, or the title of the proposed ordinance or measure given in the petitions asking for the popular vote upon the same.

Who may sign petitions.

Every person who is a qualified elector of the State of Ohio, may lawfully sign any of the petitions mentioned in this act, for an initiative or referendum vote, in the municipality where he is entitled to vote. Any person signing any name other than his own to any petition, or knowingly signing his name more than once upon a petition or petitions for a referendum election upon the same ordinance or measure or upon a petition or petitions proposing the same ordinance or measure, at one election, or who is not at the time of signing his name a qualified elector of the city, or any officer or any person willfully violating any provision of this statute, shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail or workhouse not exceeding six months, or both.

Penalty.

The sectional numbers on the margin hereof are designated as provided by law.

TIMOTHY S. HOGAN, *Attorney General.*

SECTION 6. If any section or portion of this act shall for any reason be declared to be unconstitutional, such invalidity shall not affect any other section or portion hereof.

All laws and parts of laws in conflict herewith are hereby repealed.

S. J. VINING,
Speaker of the House of Representatives.
HUGH L. NICHOLS,
President of the Senate.

Passed May 31st, 1911.
Approved June 14th, 1911.

JUDSON HARMON,
Governor.
250.

[Senate Bill No. 127.]

AN ACT

To create a state insurance fund for the benefit of injured, and the dependents of killed employes, and to provide for the administration of such fund by a state liability board of awards.

Section 1465-37. Establishment of liability board of awards.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. There is hereby created a state liability board of awards, to be composed of three members, not more

than two of whom shall belong to the same political party, to be appointed by the governor, within thirty days after the passage of this act, one of which members shall be appointed for the term of two years, one member for four years and one member for six years, and thereafter as their terms expire the governor shall appoint one member for the term of six years. Vacancies shall be filled by appointment by the governor for the unexpired term.

Appointment, term, vacancies.

Section 1465-38. SECTION 2. Each member of the board shall devote his entire time to the duties of his office and shall not hold any position of trust or profit or engage in any occupation or business interfering or inconsistent with his duty as such member, or serve on or under any committee of any political party.

Entire time of members required.

Section 1465-39. SECTION 3. Each member of the board shall receive an annual salary of five thousand dollars, payable in the same manner as salaries of state officers are paid.

Compensation.

Section 1465-40. SECTION 4. The board shall be in continuous session and open for the transaction of business during all the business hours of each and every day, excepting Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its records. All proceedings of the board shall be shown on its record of proceedings, which shall be a public record, and shall contain a record of each case considered, and the award made with respect thereto, and all voting shall be had by the calling of each member's name by the secretary and each vote shall be recorded as cast.

Continuous session.

Record.

Section 1465-41. SECTION 5. A majority of the board shall constitute a quorum for the transaction of business, and a vacancy shall not impair the right of the remaining members to exercise all the powers of the full board so long as a majority remains. Any investigations, inquiry or hearing which the board is authorized to hold, or undertake, may be held or undertaken by or before any one member of the board. All investigations, inquiries, hearings and decisions of the board, and every order made by a member thereof, when approved and confirmed by a majority of the members, and so shown on its record of proceedings, shall be deemed to be the order of the board.

Quorum.

What constitutes an order.

Section 1465-42. SECTION 6. The board shall keep and maintain its office in the city of Columbus, and shall provide a suitable room or rooms, necessary office furniture, supplies, books, periodicals and maps. All necessary expenses shall be audited and paid out of the state treasury. The board may hold sessions at any place within the state.

Place of office.

Section 1465-43. SECTION 7. The board may employ a secretary, actuary, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation. Such employments and compensation shall be first approved by the governor, and shall be paid out of the state treasury. The members of the board, actuaries, accountants, inspectors, examiners, experts, clerks, stenogra-

Employees.

phers and other assistants that may be employed shall be entitled to receive from the state treasury their actual and necessary expenses while traveling in the business of the board. Such expenses shall be itemized and sworn to by the person who incurred the expense, and allowed by the board.

Expenses.

Section 1465-44. Rules and regulations.

SECTION 8. The board shall adopt reasonable and proper rules to govern its procedure, regulate and provide for the kind and character of notices, and the services thereof, in cases of accident and injury to employes, the nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to benefits of compensation from the state insurance fund, hereinafter provided for, the forms of application of those claiming to be entitled to benefits or compensation therefrom, the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

Section 1465-45. Examinations under oath.

SECTION 9. Every employer shall furnish the board, upon request, all information required by it to carry out the purposes of this act. The board or any member thereof, or any person employed by the board for that purpose, shall have the right to examine under oath any employer or officer, agent or employe thereof.

Section 1465-46. Answers must be verified and returned to board.

SECTION 10. Every employer receiving from the board any blank with directions to fill the same, shall cause the same to be properly filled out as to answer fully and correctly all questions therein propounded, and if unable to do so shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the board within the period fixed by the board for such return.

Section 1465-47. Power to administer oath.

SECTION 11. Each member of the board, the secretary and every inspector or examiner appointed by the board shall, for the purposes contemplated by this act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

Section 1465-48. Failure to comply with order or testify, is contempt.

SECTION 12. In case of disobedience of any person to comply with the order of the board, or subpoena issued by it as one of its inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the probate judge of the county in which the person resides, on application of any member of the board, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoena issued from such court on a refusal to testify therein.

Section 1465-49. Officers' fees.

SECTION 13. Each officer who serves such subpoena shall receive the same fees as a sheriff, and each witness

who appears, in obedience to a subpoena, before the board or an inspector or examiner, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of common pleas, which shall be audited and paid from the state treasury in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers approved by any two members of the board. No witness subpoenaed at the instance of a party other than the board or an inspector shall be entitled to compensation from the state treasury unless the board shall certify that his testimony was material to the matter investigated.

Section 1465-50. SECTION 14. In an investigation, the board may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by the law for like depositions in civil actions in the court of common pleas. Depositions.

Section 1465-51. SECTION 15. A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, by a stenographer appointed by the board, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation, or of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the board with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fee therefor, as provided for transcript in courts of common pleas. Stenographer's copy received in evidence.

Section 1465-52. SECTION 16. The board shall prepare and furnish blank forms, and provide in its rules for their distribution so that the same may be readily available, of application for benefits or compensation from the state insurance fund, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of insured employers to constantly keep on hand sufficient supply of such blanks. Blank forms furnished by board.

Section 1465-53. SECTION 17. The state liability board of awards shall classify employments with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total pay roll and number of employes in each of said classes of employment, sufficiently large to provide an adequate fund for the compensation provided for in this act, and to create a surplus sufficiently large to guarantee a state insurance fund from year to year. Classification of employments.

Section 1465-54. SECTION 18. The state liability board of awards shall establish a state insurance fund from premiums paid thereto by employers and employes as herein provided, accord- State insurance fund established.

ing to the rates of risk in the classes established by it, as herein provided, for the benefit of employes of employers that have paid the premium applicable to the classes to which they belong and for the benefit of the dependents of such employes, and shall adopt rules and regulations with respect to the collection, maintenance and disbursement of said fund.

Section 1465-55. State treasurer custodian.

SECTION 19. The treasurer of state shall be the custodian of the state insurance fund, and all disbursement therefrom shall be paid by him, but upon vouchers signed by any two members of the state liability board of awards.

Section 1465-56. Bond.

SECTION 20. The treaurer of state shall give a separate and additional bond, in such amount as may be fixed by the governor, and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the state insurance fund herein provided for.

Section 1465-57.

SECTION 20-1. Any employer who employs five or more workmen or operatives regularly in the same business, or in or about the same establishment who shall pay into the state insurance fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injuries or death of any such employe, wherever occurring, during the period covered by such premiums, provided the injured employe has remained in his service with notice that his employer has paid into the state insurance fund the premiums provided by this act; the continuation in the service of such employer with such notice, shall be deemed a waiver by the employe of his right of action as aforesaid.

Who not liable for damages.

Each employer paying the premiums provided by this act into the state insurance fund shall post in conspicuous places about his place or places of business typewritten or printed notices stating the fact that he has made such payment; and the same, when so posted, shall constitute sufficient notice to his employes of the fact that he has made such payment; and of any subsequent payments he may make after such notices have been posted.

Notices of payment to be posted.

Section 1465-58.

SECTION 20-2. For the purpose of creating such state insurance fund, each employer who employes five or more workmen or operatives regularly in the same business, or in or about the same establishment, and his employes in this state, having elected to accept the provisions of this act, shall pay, on or before January 1, 1912, and semi-annually thereafter, the premiums of liability risk in the classes of employment as may be determined and published by the state liability board of awards. The said employers for themselves and their employes shall make such payments to the state treasurer of Ohio, who shall receive and place the same to the credit of such state insurance fund. The premiums provided for in this act shall be paid by the employer and employes in the following proportions, to-wit: Ninety per cent. of the premium shall be paid by the employer and ten per cent. by the employes.

Payment of premiums of liability risk.

Proportions of by employer and employe.

Each employer is authorized to deduct from the pay roll of his employes ten per cent. of the said premiums for any premium period in proportion to the pay roll of such employes; no deduction shall be made except for that portion of the premium period antedating such pay roll. Each employer shall give a receipt to each employe showing the amount which has been deducted and paid into the state insurance fund.

Section 1465-59. SECTION 21. The state liability board of awards shall disburse the state insurance fund to such employes of employers as have paid into said fund the premiums applicable to the classes to which they belong, that have been injured in the course of their employment, wheresoever such injury has occurred, and which have not been purposely self inflicted, or to their dependents in case death has ensued. Disbursement.

Section 1465-60. SECTION 21-1. All employers who employ five or more workmen or operatives regularly in the same business, or in or about the same establishment who shall not pay into the state insurance fund the premiums provided by this act, shall be liable to their employes for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or employes, and also to the personal representatives of such employes where death results from such injuries and in such action the defendant shall not avail himself or itself of the following common law defenses: Effect of failure to pay premiums.

The defense of the fellow-servant rule, the defense of the assumption of risk, or the defense of contributory negligence.

Section 1465-61. SECTION 21-2. But where a personal injury is suffered by an employe, or when death results to an employe from personal injuries while in the employ of an employer in the course of employment, and such employer has paid into the state insurance fund the premium provided for in this act, and in case such injury has arisen from the wilful act of such employer or any of such employer's officers or agents or from the failure of such employer, or any of such employer's officers or agents, to comply with any municipal ordinance or lawful order of any duly authorized officer, or any statute for the protection of the life or safety of employes, then in such event, nothing in this act contained shall affect the civil liability of such employer, but such injured employe, or his legal representative in case death results from the injury, may, at his option, either claim compensation under this act or institute proceedings in the courts for his damage on account of such injury, and such employer shall not be liable for any injury to any employe, or to his legal representative in case death results, except as provided in this act. Alternative—in case of failure of employer to comply with law or ordinance.

Every employe, or legal representative in case death results, who makes application for an award from the

Waiver.

state liability board of awards, waives his right to exercise his option to institute proceedings in any court. Every employe or his legal representative in case death results, who exercises his option to institute proceedings in court as provided in section 21-2, waives his right to any award; except as provided in section 36 of this act.

Section 1465-62.

Aid for medical, nurse and hospital services.

SECTION 23. The board shall disburse and pay from the fund, for such injury, to such employes, such amounts for medical, nurse and hospital services and medicines, as it may deem proper, not, however, in any case, to exceed the sum of two hundred dollars, in addition to such award to such employe.

Section 1465-63.

Funeral expenses.

SECTION 24. In case death ensues from the injury reasonable funeral expenses, not to exceed one hundred and fifty dollars, shall be paid from the fund, in addition to such award to such employe.

Section 1465-64.

SECTION 25. No benefit shall be allowed for the first week after the injury is received, except the disbursement provided for in the next two preceding sections.

Section 1465-65.

Aid in temporary or partial disability.

SECTION 26. In case of temporary or partial disability, the employe shall receive sixty-six and two-thirds per cent. of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of twelve dollars per week, and not less than a minimum of five dollars per week, if the employe's wages were less than five dollars per week, then he shall receive his full wages; but not to continue for more than six years from the date of the injury, nor to exceed three thousand four hundred dollars in amount from that injury.

Section 1465-66.

Cases of total disability.

SECTION 27. In case of permanent total disability the award shall be 66 2/3% of the average weekly wage, and shall continue until the death of such person so totally disabled; but not to exceed a maximum of twelve dollars per week, and not less than a minimum of five dollars per week, if the employe's wages were less than five dollars per week, then he shall receive his full wages.

Section 1465-67.

Cases of death.

SECTION 28. In case the injury causes death within the period of two years the benefits shall be in the amounts and to the persons following:

1. If there be no dependents, the disbursements from the insurance fund shall be limited to the expense provided for in sections 23 and 24.

Payment in cases of wholly dependent persons.

2. If there are wholly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent. of the average weekly wage and to continue for the remainder of the period between the date of the death and six years after the date of the injury, and not to amount to more than a maximum of thirty-four hundred dollars, nor less than a minimum of one thousand five hundred dollars.

Partly dependent persons.

3. If there are partly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent. of the average weekly wage and to continue for

all or such portion of the period of six years after the date of the injury, as the board in each case may determine, and not to amount to more than a maximum of thirty-four hundred dollars.

Section 1465-68. SECTION 29. The benefits, in case of death, shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents, as may be determined by the board, which may apportion the benefits among the dependents in such manner as it may deem just and equitable. Payment to a dependent subsequent in right may be made, if the board deem proper, and shall operate to discharge all other claims therefor.

To whom benefits shall be paid and how apportioned.

Section 1465-69. SECTION 30. The dependent or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the finding and direction of the board.

Application of benefits.

Section 1465-70. SECTION 31. The average weekly wage of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits.

Basis of computation.

Section 1465-71. SECTION 32. If it is established that the injured employe was of such age and experience when injured as that under natural conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wage.

Section 1465-72. SECTION 33. The power and jurisdiction of the board over each case shall be continuing, and it may from time to time make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion, may be justified.

Continuous jurisdiction of board.

Section 1465-73. SECTION 34. The board, under special circumstances, and when the same is deemed advisable, may commute periodical benefits to one or more lump sum payments.

Commutation.

Section 1465-74. SECTION 35. Benefits before payment shall be exempt from all claims or creditors and from any attachment or execution, and shall be paid only to such employes or their dependents.

Benefits exempt from claims.

Section 1465-75. SECTION 36. The board shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final.

Hearing, decision.

Provided, however, in case the final action of such board denies the right of the claimant to participate at all in such fund on the ground that the injury was self-inflicted or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claimant's right, then the claimant within thirty (30) days after the notice of the final action of such board may, by filing his appeal in the common pleas court of the county wherein the injury was inflicted, be entitled to a trial in the ordinary way, and be entitled to a jury if he demands it. In such a proceeding, the prosecuting attorney of the county, without additional compensation, shall represent the state liability board of awards,

Proviso.

Appeal provided.

and he shall be notified by the clerk forthwith of the filing of such appeal.

Filing of petition.

Within thirty days after filing his appeal, the appellant shall file a petition in the ordinary form against such board as defendant and further pleadings shall be had in said cause according to the rules of civil procedure, and the court, or the jury, under the instructions of the court, if a jury is demanded, shall determine the right of the claimant; and, if they determine the right in his favor, shall fix his compensation within the limits and under the rules prescribed in this act; and any final judgment so obtained shall be paid by the state liability board of awards out of the state insurance fund in the same manner as such awards are paid by such board.

Costs and attorney's fee.

The costs of such proceeding, including a reasonable attorney's fee to the claimant's attorney to be fixed by the trial judge, shall be taxed against the unsuccessful party. Either party shall have the right to prosecute error as in the ordinary civil cases.

Section 1465-76.

Rules governing board.

SECTION 36-1. Such board shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided; but may make the investigation in such manner as in their judgment, is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this act.

Section 1465-77.

Expenses, salaries and compensation.

SECTION 37. The board may make necessary expenditures to obtain statistical and other information to establish the classes provided for in section 17. The salaries and compensation of the secretary, and all actuaries, accountants, inspectors, examiners, experts, clerks and other assistants, and all other expenses of the board herein authorized including the premium to be paid by the state treasurer for the bond to be furnished by him, shall be paid out of the state treasury upon vouchers, signed by two of the members of such board, presented to the auditor of state, who shall issue his warrant therefor as in other cases.

Section 1465-78.

SECTION 38. No provision of this act relating to the amount of compensation shall be considered by, or called to the attention of the jury on the trial of any action to recover damages as herein provided.

Section 1465-79.

Report to governor.

SECTION 39. Annually on or before the 15th day of November, such board, under the oath of at least two of its members, shall make a report to the governor which shall include a statement of the number of awards made by it, and a general statement of the causes of the accidents leading to the injuries for which the awards were made, a detailed statement of the disbursements from the expense fund, and the condition of its respective funds, together with any other matters which such board deems it proper to call to the attention of the governor, including any recommendations it may have to make.

SECTION 40. The expense of such board in carrying

out the provisions of this act shall be paid until January 1, 1912, out of the general revenue of the state not otherwise appropriated. Such expense shall not exceed twenty-five thousand dollars in addition to the salaries of members of such board.

Expense to be paid out of general revenue fund.

The sectional numbers on the margin hereof are designated as provided by law.
TIMOTHY S. HOGAN, *Attorney General.*

SECTION 41. The expenses of such board in carrying out the provisions of this act shall be paid from January 1st, 1912, to January 1st, 1913, out of the general revenue fund of the state not otherwise appropriated. Such expense shall not exceed one hundred thousand dollars in addition to the salary of the members.

S. J. VINING,
Speaker of the House of Representatives.
H. L. NICHOLS,
President of the Senate.

Passed May 31st, 1911.
Approved June 15th, 1911.

JUDSON HARMON,
Governor.
251.

[House Bill No. 398.]

AN ACT

For the regulation and control of fraternal benefit societies.

Be it enacted by the General Assembly of the State of Ohio:

Section 9462. SECTION 1. Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provision for the payment of benefits in accordance with section 5 hereof, is hereby declared to be a fraternal benefit society.

Fraternal benefit society defined.

Lodge system.

Section 9463. SECTION 2. Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known, into which members shall be elected, initiated and admitted in accordance with its constitution, laws, rules, regulations and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such society to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system.

Section 9464. SECTION 3. Any such society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as

Representative form of government.

may be prescribed by its constitution and laws; provided, that the elective members shall constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws; and provided further, that the meetings of the supreme or governing body, and the election of officers, representatives or delegates shall be held as often as once in four years. The members, officers, representatives or delegates of a fraternal benefit society shall not vote by proxy.

Section 9465. Exempt from insurance laws.

SECTION 4. Except as herein provided, such societies shall be governed by this act, and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein.

Section 9466. Society shall pay benefits.

SECTION 5. Subsection 1. Every society transacting business under this act shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident or old age; provided, the period of life at which the payment of benefits for disability on account of old age shall commence, shall not be under seventy years, and may provide for monuments or tombstones to the memory of its deceased members, and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all, or such portion of the face value of his certificate as the laws of the society may provide; provided, that nothing in this act contained shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life which are payable upon the death or disability of the member occurring within the term for which the benefit certificate may be issued. Such society shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate with interest payable or compounded annually at a rate not lower than four per cent. per annum; provided, that this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contributions, and to contracts affected by such readjustment.

When extended and paid up protection may be granted.

Subsection 2. Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve necessary to enable it to do so, under a table of mortality not lower than the American Experience Table and four per cent. interest may grant to its members, extended and paid up protection, or such withdrawal equities as its constitution and laws may provide; provided, that such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made.

[House Joint Resolution No. 40.]

JOINT RESOLUTION

Proposing to amend section 35 of article II of the constitution of the state of Ohio, relating to workmen's compensation.

Be it resolved by the General Assembly of the State of Ohio, three-fifths of the members elected to each house concurrnig therein:

That there shall be submitted to the electors of the state, in the manner provided by law, at the general election to be held on the first Tuesday after the first Monday in November, 1923, a proposal to amend section 35 of article II of the constitution of the state of Ohio to read as follows:

ARTICLE II.

Sec. 35. For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all right of claimants thereto. Such board shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, and so as to equalize, insofar as possible, the burden thereof, to be expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. Such board shall have full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employes, enacted by the General Assembly or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law, shall be added by the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; and, if such compensation is paid from the state fund, the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award, notwithstanding any and all other provisions in this constitution.

SCHEDULE: If a majority of the electors voting on said amendment shall be ascertained, according to law, to have voted in favor thereof, the same shall take effect on the first day of January, 1924, and said original section 35 of article II of the constitution of Ohio shall thereupon be repealed.

Be it further resolved, That at the election herein provided for, for the submission of this amendment to the electors of the state, the same shall be placed upon this official ballot in the manner provided by law, and shall be designated as follows:

Providing compensation for all accidents and diseases arising out of employment, providing additional compensation for employes where accident or disease results from failure to comply with specific requirements for the protection of lives, health and safety of employes, abolishing open liability of employers, and providing a fund for the investigation and prevention of industrial accidents and diseases; YES.

Providing compensation for all accidents and diseases arising out of employment, providing additional compensation for employes where accident or disease results from failure to comply with specific requirements for the protection of lives, health and safety of employes, abolishing open liability of employers, and providing a fund for the investigation and prevention of industrial accidents and diseases; NO.

And be it further resolved, That the required publication of said amendment shall be made, and the form of the ballot to be used at said election for the submission thereof, shall be prepared by the secretary of state in conformity with law and the foregoing provisions.

H. H. GRISWOLD,
Speaker of the House of Representatives.

EARL D. BLOOM,
President of the Senate.

Adopted April 6, 1923.

[House Joint Resolution No. 52.]

JOINT RESOLUTION

Providing for the distribution of maps by the secretary of state.

WHEREAS, The secretary of state has in his possession many thousands of county highway maps that are becoming obsolete; therefore,

Be it resolved by the General Assembly of the State of Ohio:

That the secretary of state be, and he is hereby authorized and instructed to distribute, through the members of the General Assembly, the county maps heretofore printed and now under his control, to the public schools of Ohio and to such other public or quasi-public institutions within this state, as the individual members of the General Assembly may suggest.

H. H. GRISWOLD,
Speaker of the House of Representatives.

EARL D. BLOOM,
President of the Senate.

Adopted April 6, 1923.

(125th General Assembly)
(Amended House Bill Number 498)

AN ACT

To enact new section 2745.01 and to repeal sections 2305.112 and 2745.01 of the Revised Code to replace the existing statutory provisions on employment intentional torts with a requirement that the plaintiff in a civil action based on an employment intentional tort prove that the employer acted with intent to injure another or in the belief that the injury was substantially certain to occur.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That new section 2745.01 of the Revised Code be enacted to read as follows:

Sec. 2745.01. (A) In an action brought against an employer by an employee, or by the dependent survivors of a deceased employee, for damages resulting from an intentional tort committed by the employer during the course of employment, the employer shall not be liable unless the plaintiff proves that the employer committed the tortious act with the intent to injure another or with the belief that the injury was substantially certain to occur.

(B) As used in this section, "substantially certain" means that an employer acts with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death.

(C) Deliberate removal by an employer of an equipment safety guard or deliberate misrepresentation of a toxic or hazardous substance creates a rebuttable presumption that the removal or misrepresentation was committed with intent to injure another if an injury or an occupational disease or condition occurs as a direct result.

(D) This section does not apply to claims arising during the course of employment involving discrimination, civil rights, retaliation, harassment in violation of Chapter 4112. of the Revised Code, intentional infliction of emotional distress not compensable under Chapters 4121. and 4123. of the Revised Code, contract, promissory estoppel, or defamation.

SECTION 2. That sections 2305.112 and 2745.01 of the Revised Code are hereby repealed.

_____

Speaker _____ *of the House of Representatives.*

_____

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

_____

Secretary of State.

File No. _____ Effective Date _____

4511.106 County or township establishing tourist-oriented directional sign program [Eff. 11-1-95]

~~A board~~ THE LEGISLATIVE AUTHORITY of ~~county commissioners or~~ a ~~board of township trustees~~ LOCAL AUTHORITY may adopt a resolution establishing a program for the placement of tourist-oriented directional signs and trailblazer markers within the rights-of-way of streets and highways under ~~their~~ ITS jurisdiction. Any program established under this section shall conform to the rules and specifications contained in the program established by the director of transportation pursuant to sections 4511.102 to 4511.105 of the Revised Code and the applicable provisions of the federal manual of uniform traffic control devices. IF A LOCAL AUTHORITY ESTABLISHES A PROGRAM UNDER THIS SECTION, THE LOCAL AUTHORITY MAY REQUEST GUIDANCE FROM THE DEPARTMENT OF TRANSPORTATION IN STRUCTURING, IMPLEMENTING, AND ADMINISTERING ITS PROGRAM, BUT THE LOCAL AUTHORITY IS SOLELY RESPONSIBLE FOR THE STRUCTURE AND ACTUAL IMPLEMENTATION AND ADMINISTRATION OF ITS PROGRAM, INCLUDING, BUT NOT LIMITED TO, THE EVALUATION AND REVIEW OF APPLICATIONS TO PARTICIPATE IN THE LOCAL PROGRAM AND THE EXECUTION OF ADVERTISING AGREEMENTS WITH ELIGIBLE ATTRACTIONS.

SECTION 2. That existing sections 4511.102, 4511.103, 4511.104, 4511.105, and 4511.106 of the Revised Code are hereby repealed.

AMENDED HOUSE BILL NO. 103

Act Effective Date:	11-1-95
Date Passed:	6-27-95
Date Approved by Governor:	8-2-95
Date Filed:	8-2-95
File Number:	43
Chief Sponsor:	THOMPSON

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act's section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

To enact new sections 2305.112 and 2745.01 and to repeal sections 2305.112 and 2745.01 of the Revised Code creating an employment intentional tort.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That new sections 2305.112 and 2745.01 of the Revised Code be enacted to read

2305.112 Limitation of action for employment intentional tort [Eff. 11-1-95]

AN ACTION FOR AN EMPLOYMENT INTENTIONAL TORT UNDER SECTION [illegible] OF THE REVISED CODE SHALL BE BROUGHT WITHIN ONE YEAR OF THE [illegible] DEATH OR THE DATE ON WHICH THE EMPLOYEE KNEW OR

THROUGH THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE KNOWN OF THE INJURY, CONDITION, OR DISEASE.

(B) AS USED IN THIS SECTION, "EMPLOYEE" AND "EMPLOYMENT INTENTIONAL TORT" HAVE THE SAME MEANINGS AS IN SECTION 2745.01 OF THE REVISED CODE.

2745.01 Employment intentional tort [Eff. 11-1-95]

(A) EXCEPT AS PROVIDED IN THIS SECTION, AN EMPLOYER SHALL NOT BE LIABLE TO RESPOND IN DAMAGES AT COMMON LAW OR BY STATUTE FOR AN INTENTIONAL TORT THAT OCCURS DURING THE COURSE OF EMPLOYMENT. AN EMPLOYER ONLY SHALL BE SUBJECT TO LIABILITY TO AN EMPLOYEE OR THE DEPENDENT SURVIVORS OF A DECEASED EMPLOYEE IN A CIVIL ACTION FOR DAMAGES FOR AN EMPLOYMENT INTENTIONAL TORT.

(B) AN EMPLOYER IS LIABLE UNDER THIS SECTION ONLY IF AN EMPLOYEE OR THE DEPENDENT SURVIVORS OF A DECEASED EMPLOYEE WHO BRING THE ACTION PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE EMPLOYER DELIBERATELY COMMITTED ALL OF THE ELEMENTS OF AN EMPLOYMENT INTENTIONAL TORT.

(C) IN AN ACTION BROUGHT UNDER THIS SECTION, BOTH OF THE FOLLOWING APPLY:

(1) IF THE DEFENDANT EMPLOYER MOVES FOR SUMMARY JUDGMENT, THE COURT SHALL ENTER JUDGMENT FOR THE DEFENDANT UNLESS THE PLAINTIFF EMPLOYEE OR DEPENDENT SURVIVORS SET FORTH SPECIFIC FACTS SUPPORTED BY CLEAR AND CONVINCING EVIDENCE TO ESTABLISH THAT THE EMPLOYER COMMITTED AN EMPLOYMENT INTENTIONAL TORT AGAINST THE EMPLOYEE;

(2) NOTWITHSTANDING ANY LAW OR RULE TO THE CONTRARY, EVERY PLEADING, MOTION, OR OTHER PAPER OF A PARTY REPRESENTED BY AN ATTORNEY SHALL BE SIGNED BY AT LEAST ONE ATTORNEY OF RECORD IN THE ATTORNEY'S INDIVIDUAL NAME AND IF THE PARTY IS NOT REPRESENTED BY AN ATTORNEY, THAT PARTY SHALL SIGN THE PLEADING, MOTION, OR PAPER. FOR THE PURPOSES OF THIS SECTION, THE SIGNING BY THE ATTORNEY OR PARTY CONSTITUTES A CERTIFICATION THAT THE SIGNER HAS READ THE PLEADING, MOTION, OR OTHER PAPER; THAT TO THE BEST OF THE SIGNER'S KNOWLEDGE, INFORMATION, AND BELIEF FORMED AFTER REASONABLE INQUIRY IT IS WELL GROUNDED IN FACT OR A GOOD FAITH ARGUMENT FOR THE EXTENSION, MODIFICATION, OR REVERSAL OF EXISTING LAW; AND THAT IT IS NOT INTERPOSED FOR ANY IMPROPER PURPOSE, INCLUDING, BUT NOT LIMITED TO, HARASSING OR CAUSING UNNECESSARY DELAY OR NEEDLESS INCREASE IN THE COST OF THE ACTION.

IF THE PLEADING, MOTION, OR OTHER PAPER IS NOT SIGNED AS REQUIRED IN DIVISION (C)(2) OF THIS SECTION, THE COURT SHALL STRIKE THE PLEADING, MOTION, OR OTHER PAPER UNLESS THE ATTORNEY OR PARTY PROMPTLY SIGNS IT AFTER THE OMISSION IS CALLED TO THE ATTORNEY'S OR PARTY'S ATTENTION. IF A PLEADING, MOTION, OR OTHER PAPER IS SIGNED IN VIOLATION OF DIVISION (C)(2) OF THIS SECTION, THE COURT, UPON MOTION OR UPON ITS OWN INITIATIVE, SHALL IMPOSE UPON THE PERSON WHO SIGNED IT OR THE REPRESENTED PARTY, OR BOTH, AN APPROPRIATE SANCTION. THE SANCTION MAY INCLUDE, BUT IS NOT LIMITED TO, AN ORDER TO PAY TO THE OTHER PARTY THE AMOUNT OF THE REASONABLE EXPENSES INCURRED DUE TO THE FILING OF THE PLEADING, MOTION, OR OTHER PAPER, INCLUDING REASONABLE ATTORNEY'S FEES.

(D) AS USED IN THIS SECTION:

(1) "EMPLOYMENT INTENTIONAL TORT" MEANS AN ACT COMMITTED BY AN EMPLOYER IN WHICH THE EMPLOYER DELIBERATELY AND INTENTIONALLY

INJURES, CAUSES AN OCCUPATIONAL DISEASE OF, OR CAUSES THE DEATH OF AN EMPLOYEE.

(2) "EMPLOYER" MEANS ANY PERSON WHO EMPLOYS AN INDIVIDUAL.

(3) "EMPLOYEE" MEANS ANY INDIVIDUAL EMPLOYED BY AN EMPLOYER.

(4) "EMPLOY" MEANS TO PERMIT OR SUFFER TO WORK.

SECTION 2. That sections 2305.112 and 2745.01 of the Revised Code are hereby repealed.

SECTION 3. The General Assembly hereby declares its intent in enacting sections 2305.112 and 2745.01 of the Revised Code to supersede the effect of the Ohio Supreme Court decisions in Blankenship v. Cincinnati Milacron Chemicals, Inc. (1982), 69 Ohio St. 2d 608 (decided March 3, 1982); Jones v. VIP Development Co. (1982), 15 Ohio St. 3d 90 (decided December 31, 1982); Van Fossen v. Babcock & Wilcox (1988), 36 Ohio St. 3d 100 (decided April 14, 1988); Pariseau v. Wedge Products, Inc. (1988), 36 Ohio St. 3d 124 (decided April 13, 1988); Hunter v. Shenago Furnace Co. (1988), 38 Ohio St. 3d 235 (decided August 24, 1988); and Fyffe v. Jeno's, Inc. (1991), 59 Ohio St. 3d 115 (decided May 1, 1991), to the extent that the provisions of sections 2305.112 and 2745.01 of the Revised Code are to completely and solely control all causes of actions not governed by Section 35 of Article II, Ohio Constitution, for physical or psychological conditions, or death, brought by employees or the survivors of deceased employees against employers.

SECTION 4. If any provision of a section of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.

HOUSE
BILL NO. 67

Act Effective Date:	11-1-95
Date Passed:	6-20-95
Date Approved by Governor:	8-2-95
Date Filed:	8-2-95
File Number:	40
Chief Sponsor:	MYERS

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act is not of a general and permanent nature and does not require a Revised Code section number.

To authorize the conveyance of real estate owned by the Ohio Historical Society and located in Fairfield County to the Fairfield County Board of Park Commissioners for use as a county park.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. The Ohio Historical Society (formerly the Ohio State Archaeological and Historical Society) is hereby authorized to execute a deed conveying to the Fairfield County

Board of Park Commissioners and its successors and assigns all of the Society's right, title, and interest in the following described real estate:

Parcel Number 1:

Being a part of the S.W. 1/4 of section 34, township 12, range 20, Clearcreek township, Fairfield county, Ohio, bounded and described as follows:

Beginning at a concrete marker post in the land line of the heirs of Sam Irwin, Harry Griner, and the Ohio State Archaeological and Historical Society and being 2007.06 feet north and 1340.46 feet east of the southwest corner of section 34, thence east 672.50 feet to a spike in the center of county road No. 131, thence north 11° west 82.60 feet with the center of the road to a spike, thence west 479.5 feet to a stake, thence north 11° west 127.85 feet to a stake, thence west 322.60 ft. to a point in the center of Salt Creek, thence south 6° east 27.49 feet with the center of Salt Creek to a point from which a stake bears east 55.0 feet, thence south 20° 45' east 191.0 feet with the center of Salt Creek to a point from which a concrete marker post bears east a distance of 98.00 feet, thence east 98.0 ft. to the place of beginning and containing 2.333 acres more or less and subject to legal highways.

Parcel Number 2:

Being a parcel of land located in the Southwest Quarter of Section 34, Township 12, Range 20, and in Clear Creek Township, Fairfield County, State of Ohio, more particularly described as follows; from a post 686.40 feet east of the southwest corner of and in the south line of Section 34 above mentioned, measure N 5° 16' E 1314.72 feet to the point of beginning (a stake); thence N 84°-44' W 103.62 feet to a point (post); thence N 5°-33' E 733.26 feet to a point (post); — thence S 84°-50' E 759.09 feet to a point marked by an iron pin and gear (along the above line at 565 feet, the line passed the center of a 15 inch white oak tree about 18 feet below the top of the steep creek bank, the center of the tree being 1.65 feet to the right of the line; and the line crosses the center of Salt Creek at 659 feet which is marked by a stake from which a 36 inch clump of elms on the east bank is N 41°-20' E 36.4 feet, and an 18 inch willow on present fence line of east bank of creek is S 68°-20' E 48 feet) from which pin and gear a 30 inch walnut is S 45° W 2.5 feet; thence S 13°-31' E 702.69 feet to a point, from which point, an iron pin and gear in the south line of Section 34 bears S 13°-31' E 1458.16 feet; thence N 88°-44' W 887.78 feet to the point of beginning.

This parcel contains 14.12 acres and is off of the north end of Tract #3 of Joseph Edgar Ward estate given to Frank H. Ward by Fairfield County Probate Court Transfer #11,859 on May 12, 1934, said Court Record also refers to Tract #11 in the partition case of Mary E. Rhodos, et. al., vs., Walter E. Davis, et. al., #13190 as recorded in Partition Record #15, page 95 in Fairfield County, Ohio.

Parcel Number 3:

Being a part of the Southwest Quarter of Section 34, Township 12, Range 20, Clearcreek Township, Fairfield County, Ohio, Beginning at a Concrete marker post in the land line of the heirs of Sam Irwin, Harry Griner, and the OHIO STATE ARCHAEOLOGICAL AND HISTORICAL SOCIETY and being 2007.06 feet north and 1340.46 feet east of the Southwest corner of Section 34, thence South 13°-31' east 4.11 feet; thence east 672.50 feet to the center of County road No. 131; thence north 11°-00' west 4.10 feet to an iron pin; thence west 672.50 feet to the place of Beginning, Containing .06 acres, more or less.

SECTION 2. Consideration for conveyance of the real estate described in Section 1 of this act is the mutual benefit accruing to the state and Fairfield County from the county's use of the real estate as a county park.

SECTION 3. The conveyance of the real estate described in Section 1 of this act is subject to the following conditions and restrictions:

(A) The Ohio Historical Society has the exclusive right to conduct or authorize the conducting of archaeological surveys and excavations on the real estate. Any archaeological studies made or artifacts recovered from the real estate are the property of the Ohio Historical Society.

(B) No construction or excavation that disturbs the earth of the real estate shall be commenced without the written approval of the Director of the Ohio Historical Society. Before the Director gives approval, an archaeological survey must be performed. The Director shall review

payer has taken a deduction for federal income tax purposes as reportable on the taxpayer's form 2106, and against which a like deduction has not been allowed by the municipal corporation, the municipal corporation shall deduct from the taxpayer's taxable income an amount equal to the deduction shown on such form allowable against such income, to the extent not otherwise so allowed as a deduction by the municipal corporation. In the case of a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship, no municipal corporation may tax or use as the base for determining the amount of the net profit that shall be considered as having a taxable situs in the municipal corporation, a greater amount than the net profit reported by the taxpayer on schedule C filed in reference to the year in question as taxable income from such sole proprietorship, except as otherwise specifically provided by ordinance or regulation.

No municipal corporation shall tax ~~the~~ ANY OF THE FOLLOWING:

(A) THE military pay or allowances of members of the armed forces of the United States~~, or the~~;

(B) THE income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities;

(C) INTANGIBLE INCOME.

Nothing in this section or section 718.02 of the Revised Code, shall authorize the levy of any tax on income which a municipal corporation is not authorized to levy under existing laws or shall require a municipal corporation to allow a deduction from taxable income for losses incurred from a sole proprietorship or partnership.

SECTION 2. That existing sections 133.23, 709.16, and 718.01 of the Revised Code are hereby repealed.

SECTION 3. Notwithstanding section 718.01 of the Revised Code, as amended by this act, a municipal corporation that was permitted by virtue of its local ordinances to tax any type of intangible income on or before April 1, 1986, may continue to tax such intangible income received by a taxpayer through 1988, or in the case of a taxpayer whose municipal income tax liability is based on a fiscal year, intangible income received through the taxpayer's fiscal year ending in 1988.

SECTION 4. Notwithstanding any provision of Chapter 133. of the Revised Code to the contrary, on and after the effective date of this act and until January 1, 1987, if bonds and notes issued under Chapter 133. of the Revised Code are rejected by the officers mentioned in section 133.34 of the Revised Code, then those bonds and notes may be sold at private sale for not less than ninety-seven per cent of their face value with accrued interest.

SECTION 5. If any provision of this act or the application of any provision of this act to any person is declared invalid by a court of this state, the invalidity does not affect other provisions of this act, or applications of other provisions of this act, that can be given effect without the invalid provision or application, and to this end the provisions are severable.

SECTION 6. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity lies in the fact that immediate action is required in order to prevent the proliferation of taxation of intangible income by municipalities and to permit political subdivisions to take advantage of current economic conditions and issue bonds prior to the effective date of tax proposals currently pending before Congress that may adversely affect such bonds. Therefore, this act shall go into immediate effect.

AMENDED SUBSTITUTE SENATE BILL NO. 307

Act Effective Date:	8-22-86
Date Passed:	5-15-86
Date Approved by Governor:	5-23-86
Date Filed:	5-23-86
File Number:	213
Chief Sponsor:	FINAN

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act's section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Editor's Note: An LSC Analysis is printed at the end of this bill.

To amend sections 126.30, 4121.02, 4121.30, 4121.32, 4121.35, 4121.38, 4121.40, 4121.63, 4121.67, 4121.69, 4123.01, 4123.28, 4123.29, 4123.34, 4123.343, 4123.35, 4123.411, 4123.413, 4123.414, 4123.512, 4123.515, 4123.516, 4123.519, 4123.54, 4123.56, 4123.57, 4123.58, 4123.62, 4123.651, 4123.66, 4123.68, 4123.74, and 4123.80 and to enact sections 4121.47, 4121.48, 4121.70, 4121.80, 4123.351, and 4123.352 of the Revised Code to authorize employees to bring intentional tort suits against employers under certain circumstances, to establish an Intentional Tort Fund to pay damages to employees for intentional torts of employers, to revise the definition of "injury" for the purposes of workers' compensation, to change the circumstances under which a disabled employee remains entitled to temporary, total compensation if the employer offers the employee work, to replace temporary, partial compensation with another form of compensation, to revise the criteria for self-insurers, to establish a surety bond program for self-insurers, to increase the levels of certain types of compensation payments to employees, and to make other administrative changes in the workers' compensation program.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 126.30, 4121.02, 4121.30, 4121.32, 4121.35, 4121.38, 4121.40, 4121.63, 4121.67, 4121.69, 4123.01, 4123.28, 4123.29, 4123.34, 4123.343, 4123.35, 4123.411, 4123.413, 4123.414, 4123.512, 4123.515, 4123.516, 4123.519, 4123.54, 4123.56, 4123.57, 4123.58, 4123.62, 4123.651, 4123.66, 4123.68, 4123.74, and 4123.80 be amended and sections 4121.47, 4121.48, 4121.70, 4121.80, 4123.351, and 4123.352 of the Revised Code be enacted to read as follows:

126.30 State agencies to pay interest on past-due obligations; conditions; payment date for invoices submitted to workers' compensation bureau; defective invoices; reports [Eff. 8-22-86]

(A) Any state agency that purchases, leases, or otherwise acquires any equipment, materials, goods, supplies, or services from any person and fails to make payment for the equipment, materials, goods, supplies, or services by the required payment date shall pay an interest charge to the person in accordance with division (E) of this section. Except as otherwise provided in division (B), (C), or (D) of this section, the required payment date shall be the date on

which payment is due under the terms of a written agreement between the state agency and the person or, if a specific payment date is not established by such a written agreement, the required payment date shall be thirty days after the state agency receives a proper invoice for the amount of the payment due.

(B) If the invoice submitted to the state agency contains a defect or impropriety, the agency shall send written notification to the person within fifteen days after receipt of the invoice. The notice shall contain a description of the defect or impropriety and any additional information necessary to correct the defect or impropriety. If the agency sends such written notification to the person, the required payment date shall be thirty days after the state agency receives a proper invoice.

(C) In applying this section to claims submitted to the department of human services by providers of equipment, materials, goods, supplies, or services, the required payment date shall be the date on which payment is due under the terms of a written agreement between the department and the provider. If a specific payment date is not established by a written agreement, the required payment date shall be thirty days after the department receives a proper claim. If the department determines that the claim is improperly executed or that additional evidence of the validity of the claim is required, the department shall notify the claimant in writing or by telephone within fifteen days after receipt of the claim, except that during the period beginning on July 1, 1985, and ending on December 31, 1985, the department shall notify the claimant in writing or by telephone within thirty days after receipt of the claim. The notice shall state that the claim is improperly executed and needs correction or that additional information is necessary to establish the validity of the claim. If the department makes such notification to the provider, the required payment date shall be thirty days after the department receives the corrected claim or such additional information as may be necessary to establish the validity of the claim.

(D) ~~The provisions of divisions (A) and (B) of this section shall not apply to billings filed pursuant to the provisions of Chapter 4121., 4123., 4127., or 4131. of the Revised Code, and payment thereof shall be governed by the provisions of such chapters~~ IN APPLYING THIS SECTION TO INVOICES SUBMITTED TO THE BUREAU OF WORKERS' COMPENSATION FOR EQUIPMENT, MATERIALS, GOODS, SUPPLIES, OR SERVICES PROVIDED TO EMPLOYEES IN CONNECTION WITH AN EMPLOYEE'S CLAIM AGAINST THE STATE INSURANCE FUND, THE PUBLIC WORK-RELIEF EMPLOYEES' COMPENSATION FUND, THE COAL-WORKERS PNEUMOCONIOSIS FUND, OR THE MARINE INDUSTRY FUND AS COMPENSATION FOR INJURIES OR OCCUPATIONAL DISEASE PURSUANT TO CHAPTER 4123., 4127., OR 4131. OF THE REVISED CODE, THE REQUIRED PAYMENT DATE SHALL BE THE DATE ON WHICH PAYMENT IS DUE UNDER THE TERMS OF A WRITTEN AGREEMENT BETWEEN THE BUREAU AND THE PROVIDER. IF A SPECIFIC PAYMENT DATE IS NOT ESTABLISHED BY A WRITTEN AGREEMENT, THE REQUIRED PAYMENT DATE SHALL BE THIRTY DAYS AFTER THE BUREAU RECEIVES A PROPER INVOICE FOR THE AMOUNT OF THE PAYMENT DUE OR THIRTY DAYS AFTER THE FINAL ADJUDICATION ALLOWING PAYMENT OF AN AWARD TO THE EMPLOYEE, WHICHEVER IS LATER. NOTHING IN THIS SECTION SHALL SUPERSEDE ANY FASTER TIMETABLE FOR PAYMENTS TO HEALTH CARE PROVIDERS CONTAINED IN SECTIONS 4121.44, 4123.513, 4123.514, AND 4123.515 OF THE REVISED CODE.

FOR PURPOSES OF THIS DIVISION, A "PROPER INVOICE" INCLUDES THE CLAIMANT'S NAME, CLAIM NUMBER AND DATE OF INJURY, EMPLOYER'S NAME, THE PROVIDER'S NAME AND ADDRESS, THE PROVIDER'S ASSIGNED PAYEE NUMBER, A DESCRIPTION OF THE EQUIPMENT, MATERIALS, GOODS, SUPPLIES, OR SERVICES PROVIDED BY THE PROVIDER TO THE CLAIMANT, THE DATE PROVIDED, AND THE AMOUNT OF THE CHARGE. IF MORE THAN ONE ITEM OF EQUIPMENT, MATERIALS, GOODS, SUPPLIES, OR SERVICES IS LISTED BY A PROVIDER ON A SINGLE APPLICATION FOR PAYMENT, EACH ITEM SHALL BE CONSIDERED SEPARATELY IN DETERMINING IF IT IS A PROPER INVOICE.

IF PRIOR TO A FINAL ADJUDICATION THE BUREAU DETERMINES THAT THE INVOICE CONTAINS A DEFECT, THE BUREAU SHALL NOTIFY THE PROVIDER IN WRITING AT LEAST FIFTEEN DAYS PRIOR TO WHAT WOULD BE THE REQUIRED PAYMENT DATE IF THE INVOICE DID NOT CONTAIN A DEFECT. THE NOTICE SHALL CONTAIN A DESCRIPTION OF THE DEFECT AND ANY ADDITIONAL INFORMATION NECESSARY TO CORRECT THE DEFECT. IF THE BUREAU SENDS A NOTIFICATION TO THE PROVIDER, THE REQUIRED PAYMENT DATE SHALL BE REDETERMINED IN ACCORDANCE WITH THIS DIVISION AFTER THE BUREAU RECEIVES A PROPER INVOICE.

FOR PURPOSES OF THIS DIVISION, "FINAL ADJUDICATION" MEANS THE LATER OF THE DATE OF THE DECISION OR OTHER ACTION BY THE BUREAU, THE INDUSTRIAL COMMISSION, OR A COURT ALLOWING PAYMENT OF THE AWARD TO THE EMPLOYEE FROM WHICH THERE IS NO FURTHER RIGHT TO RECONSIDERATION OR APPEAL THAT WOULD REQUIRE THE BUREAU TO WITHHOLD COMPENSATION AND BENEFITS, OR THE DATE ON WHICH THE RIGHTS TO RECONSIDERATION OR APPEAL HAVE EXPIRED WITHOUT AN APPLICATION THEREFOR HAVING BEEN FILED OR, IF LATER, THE DATE ON WHICH AN APPLICATION FOR RECONSIDERATION OR APPEAL IS WITHDRAWN. IF AFTER FINAL ADJUDICATION, THE ADMINISTRATOR OF THE BUREAU OF WORKERS' COMPENSATION OR THE INDUSTRIAL COMMISSION MAKES A MODIFICATION WITH RESPECT TO FORMER FINDINGS OR ORDERS, PURSUANT TO CHAPTER 4123., 4127., OR 4131. OF THE REVISED CODE OR PURSUANT TO COURT ORDER, THE ADJUDICATION PROCESS SHALL NO LONGER BE CONSIDERED FINAL FOR PURPOSES OF DETERMINING THE REQUIRED PAYMENT DATE FOR INVOICES FOR EQUIPMENT, MATERIALS, GOODS, SUPPLIES, OR SERVICES PROVIDED AFTER THE DATE OF THE MODIFICATION WHEN THE PROPRIETY OF THE INVOICES IS AFFECTED BY THE MODIFICATION.

(E) The interest charge on amounts due shall be paid to the person for the period beginning on the day after the required payment date and ending on the day that payment of the amount due is made, except that during the period beginning on July 1, 1985, and ending on June 30, 1986, the interest charge on amounts due shall be paid to the person for the period beginning on the sixteenth day after the required payment date and ending on the day that payment of the amount due is made. The amount of the interest charge that remains unpaid at the end of any thirty-day period after the required payment date shall be added to the ~~principl beginning on the day after the required payment date and ending on the day that payment of the amount due is made, except that during the period beginning on July 1, 1985, and ending on June 30, 1986, the interest charge on amounts due shall be paid to the person for the period beginning on the sixteenth day after the required payment date and ending on the day that payment of the amount due is made. The amount of the interest charge that remains unpaid at the end of the thirty day period after the required payment date shall be added to the~~ principal amount of the debt and thereafter the interest charge shall accrue on the principal amount of the debt plus the added interest charge. The interest charge shall be at the rate per calendar month that equals one-twelfth of the rate per

annum prescribed by section 5703.47 of the Revised Code for the calendar year that includes the month for which the interest charge accrues.

(F) No appropriations shall be made for the payment of any interest charges required by this section. Any state agency required to pay interest charges under this section shall make the payments from moneys available for the administration of agency programs.

If a state agency pays interest charges under this section, but determines that all or part of the interest charges should have been paid by another state agency, the state agency that paid the interest charges may request the attorney general to determine the amount of the interest charges that each state agency should have paid under this section. If the attorney general determines that the state agency that paid the interest charges should have paid none or only a part of the interest charges, the attorney general shall notify the state agency that paid the interest charges, any other state agency that should have paid all or part of the interest charges, and the director of budget and management of ~~its~~ HIS decision, stating the amount of interest charges that each state agency should have paid. The director shall transfer from the appropriate funds of any other state agency that should have paid all or part of the interest charges to the appropriate funds of the state agency that paid the interest charges an amount necessary to implement the attorney general's decision.

(G) Not later than forty-five days after the end of each fiscal year, each state agency shall file with the director of budget and management a detailed report concerning the interest charges the agency paid under this section during the previous fiscal year. The report shall include the number, amounts, and frequency of interest charges the agency incurred during the previous fiscal year and the reasons why the interest charges were not avoided by payment prior to the required payment date. The director shall compile a summary of all the reports submitted under this division and shall submit a copy of the summary to the president and minority leader of the senate and to the speaker and minority leader of the house of representatives no later than the thirtieth day of September of each year.

4121.02 Composition of industrial commission; terms of office [Eff. 8-22-86]

The industrial commission shall be composed of five members to be appointed by the governor with the advice and consent of the senate. Persons so appointed shall be individuals possessing a recognized expertise in the field of workers' compensation. Terms of office shall be for six years, commencing on the first day of July and ending on the thirtieth day of June. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. Two of the appointees to the commission shall be persons who, on account of their previous vocation, employment, or affiliations, can be classed as representatives of employers, and two of such appointees shall be persons who, on account of their previous vocation, employment, or affiliations can be classed as representatives of employees. One of the appointees shall be a person who, on account of his previous vocation, employment, or affiliation can be classed as a representative of the public. Not more than three of the members of the commission shall belong to or be affiliated with the same political party.

The governor shall not appoint any person to more than two full terms of office on the commission. This restriction does not prevent the governor from appointing a person to fill a vacancy caused by the death, resignation, or removal of a commission member and also appointing that person twice to full terms on the commission, or from appointing a person previously appointed to fill less than a full term twice to full terms on the commission. ~~A~~ EXCEPT FOR THE PUBLIC MEMBER'S TENURE AS A MEMBER OF THE SELF-INSURING EMPLOYER'S EVALUATION BOARD, A member of the industrial commission shall hold no other public office and shall devote his full time to his duties as a member of the commission.

4121.30 Adoption, publication, and proposal of rules [Eff. 8-22-86]

(A) All rules governing the operating procedure of the bureau of workers' compensation, regional boards of review, and the industrial commission shall be adopted pursuant to Chapter 119. of the Revised Code, except that determinations of the bureau, district hearing officers, a regional board of review, a staff hearing officer, or the commission, with respect to an individual employee's claim to participate in the state insurance fund are governed only by Chapter 4123. of the Revised Code.

THE BUREAU AND COMMISSION SHALL PROCEED JOINTLY, PURSUANT TO CHAPTER 119. OF THE REVISED CODE, INCLUDING A JOINT HEARING, TO ADOPT JOINT RULES GOVERNING THE OPERATING PROCEDURES OF THE BUREAU, REGIONAL BOARDS OF REVIEW, AND COMMISSION. THE BUREAU IS RESPONSIBLE FOR THE PUBLICATION OF THE JOINT RULES IN A SINGLE PUBLICATION.

(B) Upon submission to the bureau or the industrial commission of a petition containing not less than fifteen hundred signatures of adult residents of the state, any individual may propose a rule for adoption, amendment, or rescission by the bureau or the commission. If, upon investigation, the bureau or commission is satisfied that the signatures upon the petition are valid, it shall proceed, pursuant to Chapter 119. of the Revised Code, to consider adoption, amendment, or rescission of the rule.

(C) The bureau and commission shall make available in a timely manner and at cost copies of all rules currently in force and for that purpose shall maintain a mailing list of all persons requesting copies of the rules.

4121.32 Operating manuals [Eff. 8-22-86]

(A) The rules covering operating procedure and criteria for decision-making that the administrator of the bureau of workers' compensation and the industrial commission are required to adopt pursuant to section 4121.31 of the Revised Code shall be supplemented with operating manuals setting forth the procedural steps in detail for performing each of the assigned tasks of each section of the bureau and commission. No employee may deviate from manual procedures without authorization of the section chief. Manuals shall set forth the procedure for assignment and transfer of claims within sections, and shall require the impartial, random assignment of claims so as to prevent special handling or undue influence on claims handling and claims decision-making.

(B) Manuals shall be designed to provide performance objectives, and may require employees to record sufficient data to reasonably measure the efficiency of functions in all sections. The division of research and statistics shall perform periodic cost effectiveness analyses which shall be made available to the general assembly, the governor, and to the public during normal working hours.

(C) Under the overall policy direction of the commission, the bureau and commission each shall develop, adopt, and use a policy manual setting forth the guidelines and bases for decision-making for any decision which is the responsibility of the bureau, district hearing officers, regional boards of review, staff hearing officers, or the commission. Guidelines shall be set forth in the policy manual by the bureau and commission to the extent of their respective jurisdictions for deciding at least the following specific matters:

(1) Reasonable medical charges;
(2) Reasonable drug charges;
(3) Reasonable hospital charges;
(4) Reasonable nursing charges;
(5) Reasonable ambulance services;

(6) Relationship of drugs to injury;
(7) Awarding lump sum advances for creditors;
(8) Awarding lump sum advances for attorney fees;
(9) Placing a claimant into rehabilitation;
(10) Transferring costs of a claim from employer costs to the statutory surplus fund pursuant to section 4123.343 of the Revised Code;
(11) Utilization of physician specialist reports;
(12) Determining percentage of permanent partial disability, temporary partial disability, temporary total disability, violations of specific safety requirements, award under division ~~(C)~~(B) of section 4123.57 of the Revised Code, and permanent total disability.

(D) With respect to any determination of disability under Chapter 4123. of the Revised Code, when the physician makes a determination based upon statements or information furnished by the claimant or upon subjective evidence, he shall clearly indicate this fact in his report.

(E) The bureau and commission shall make copies of all manuals available to interested parties at cost.

4121.35 Staff hearing officers; hearings; petition for transfer; chief hearing officer [Eff. 8-22-86]

(A) The industrial commission may appoint staff hearing officers to consider and decide on behalf of the commission all matters over which the commission has jurisdiction. All staff hearing officers shall be full-time employees of the commission and be admitted to the practice of law or possess prior experience and training sufficient to make them knowledgeable in workers' compensation law and practice. Staff hearing officers shall not engage in any other activity that interferes with their full-time employment by the commission during normal working hours.

(B) Staff hearing officers of the commission may hear and decide the following matters:

(1) Applications for permanent, total disability awards pursuant to section 4123.58 of the Revised Code;

(2) Lump sum awards pursuant to section 4123.64 of the Revised Code;

(3) Final settlements pursuant to section 4123.65 of the Revised Code;

(4) Applications for additional awards for violation of a specific safety rule of the commission pursuant to Section 35 of Article II of the Ohio Constitution;

(5) Applications for reconsideration pursuant to division ~~(B)~~(A) of section 4123.57 of the Revised Code. Decisions of the staff hearing officers on reconsideration pursuant to division ~~(B)~~(A) of section 4123.57 of the Revised Code shall be final.

(6) Appeals to the commission taken pursuant to section 4123.516 of the Revised Code. The decision of a staff hearing officer shall be the decision of the commission for the purposes of section 4123.519 of the Revised Code.

(C) Staff hearing officers shall hold hearings on all matters referred to them for hearing. Hearing procedures shall conform to the rules of the commission as to notice, records, and the form of the decision. Any person adversely affected by a decision of a staff hearing officer on a matter of original jurisdiction under divisions (B)(1) to (4) of this section may of right appeal that decision directly to the industrial commission.

(D) The commission shall adopt rules requiring the regular rotation of staff hearing officers with respect to the types of matters under consideration and that prevent the consideration of a workers' compensation claim unless all interested and affected parties have the opportunity to be present and to present evidence and arguments in support or in rebuttal to the evidence or arguments of other parties.

(E) No person may seek transfer of a matter assigned to a staff hearing officer except upon written petition to the commission. The commission shall only allow the motion upon filing of an agreement of both parties or if the chief hearing officer indicates his approval.

(F) The commission shall appoint a chief hearing officer who shall have direct supervision of the activities of all staff hearing officers and all district hearing officers. The chief shall assign all matters for hearing pursuant to division (B) of this section to a staff hearing officer and for that purpose shall maintain a docket listing the assignment to and any transfer of assignment of any matter under consideration by a staff hearing officer.

(G) The commission may adopt a rule providing that any employer who makes his semiannual premium payment at least one month prior to the last day on which the payment may be made without penalty shall be entitled to such a discount as may from time to time be fixed by the commission.

4121.38 Medical section [Eff. 8-22-86]

(A) The industrial commission shall maintain a medical section under direct commission control to serve both the industrial commission and the bureau of workers' compensation and shall provide for its management.

(B) The medical section shall:

(1) Implement a program of impairment evaluation training for its staff physicians;

(2) Issue a manual of commission policy as to impairment evaluation so as to increase consistency of medical reports. This manual shall be available to the public at cost but shall be provided FREE to all physicians who treat claimants or to whom claimants are referred for evaluations. THE COMMISSION SHALL TAKE STEPS TO ENSURE THAT THE MANUAL RECEIVES THE WIDEST POSSIBLE DISTRIBUTION TO PHYSICIANS.

(3) Develop a method of peer review of medical reports prepared by the commission referral doctors;

(4) Assist the administrator to determine eligibility and reasonableness of the compensation payments for medical, hospital, drug, and nursing services. The administrator shall assign sufficient investigators to the medical section to provide control over such expenditure.

(5) Issue a policy manual as to the basis upon which referrals to other than commission specialists will be made;

(6) Secure the services of a pharmacist on a full or part-time basis to assist the claims section of the bureau in the review of drug bills.

(C) The commission shall designate two hearing examiners and two medical staff members who shall be specially trained in medical-legal analysis. The specialists shall write evaluations of medical-legal problems upon assignment by other hearing examiners or the commission. The director of administrative services upon commission advice shall assign such employees to a salary schedule commensurate with expertise required of them.

(D) The commission shall require that prior to any examination, a physician to whom a claimant is referred for examination receives all necessary medical information in the claim file about the claimant and a complete statement as to the purpose of the examination.

4121.40 Directors of district offices; investigators [Eff. 8-22-86]

(A) The administrator of the bureau of workers' compensation shall appoint a district director for each district office. Bureau district directors shall have the following duties:

(1) Provide each claimant and employer fair, impartial, and equal treatment;

(2) Recommend any needed improvements for changes in staff size and accessibility to district offices;

(3) Recommend to the administrator appropriate action concerning any allegations of misconduct, abuse of authority, or fraud committed in his district office;

(4) Ensure that all current bureau rules and operating procedures are carried out by all employees under his direction;

(5) Assist claimants and employers who contact the district office for information or assistance with respect to claims processing and coverage.

(B) The administrator shall assign to each district office an adequate number of investigators and field auditors.

District directors shall make investigators available to district hearing officers as needed.

IN ADDITION TO OTHER DUTIES THE ADMINISTRATOR MAY ASSIGN TO INVESTIGATORS, THEY SHALL, AT THE DISTRICT DIRECTORS' DIRECTION, INVESTIGATE ALLEGED INSTANCES OF PERSONS RECEIVING COMPENSATION PURSUANT TO SECTION 4123.58 OF THE REVISED CODE AND ENGAGING IN REMUNERATIVE EMPLOYMENT THAT IS INCOMPATIBLE WITH THE TERMS OF THAT SECTION.

4121.47 Violation of specific safety rule; order to correct; employer's appeal; deposit of penalties [Eff. 8-22-86]

(A) NO EMPLOYER SHALL VIOLATE A SPECIFIC SAFETY RULE OF THE INDUSTRIAL COMMISSION OR ACT OF THE GENERAL ASSEMBLY ADOPTED PURSUANT TO SECTION 4121.13 OR 4121.131 OF THE REVISED CODE.

(B) WHERE THE COMMISSION, IN THE COURSE OF ITS DETERMINATION OF A CLAIM FOR AN ADDITIONAL AWARD UNDER SECTION 35 OF ARTICLE II, OHIO CONSTITUTION, FINDS THE EMPLOYER GUILTY OF VIOLATING DIVISION (A) OF THIS SECTION, IT SHALL, IN ADDITION TO ANY AWARD PAID TO THE CLAIMANT, ISSUE AN ORDER TO CORRECT THE VIOLATION WITHIN SUCH PERIOD OF TIME AS THE COMMISSION FIXES. FOR ANY VIOLATION OCCURRING WITHIN TWENTY-FOUR MONTHS OF THE LAST VIOLATION, THE COMMISSION SHALL ASSESS AGAINST THE EMPLOYER A CIVIL PENALTY IN AN AMOUNT THE COMMISSION DETERMINES UP TO A MAXIMUM OF FIFTY THOUSAND DOLLARS FOR EACH VIOLATION. IN FIXING THE EXACT PENALTY, THE COMMISSION SHALL BASE ITS DECISION UPON THE SIZE OF THE EMPLOYER AS MEASURED BY THE NUMBER OF EMPLOYEES, ASSETS, AND EARNINGS OF THE EMPLOYER.

(C) AN EMPLOYER DISSATISFIED WITH THE IMPOSITION OF A CIVIL PENALTY PURSUANT TO DIVISION (B) OF THIS SECTION MAY APPEAL THE COMMISSION'S DECISION TO A COURT OF COMMON PLEAS PURSUANT TO THE RULES OF CIVIL PROCEDURE. AN APPEAL OPERATES TO STAY THE PAYMENT OF THE FINE PENDING THE APPEAL.

(D) THE COMMISSION SHALL DEPOSIT ALL PENALTIES COLLECTED PURSUANT TO THIS SECTION IN THE OCCUPATIONAL SAFETY LOAN PROGRAM FUND ESTABLISHED PURSUANT TO SECTION 4121.48 OF THE REVISED CODE.

4121.48 Occupational safety loan program; limitations; occupational safety loan fund [Eff. 8-22-86]

(A) BEGINNING ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, THE INDUSTRIAL COMMISSION SHALL OPERATE AN OCCUPATIONAL SAFETY LOAN PROGRAM. THE COMMISSION MAY ADOPT RULES, EMPLOY PERSONNEL, AND DO ALL THINGS NECESSARY FOR THAT PURPOSE.

(B) THE OCCUPATIONAL SAFETY LOAN PROGRAM SHALL MAKE LOANS TO EMPLOYERS AT RATES FIXED BY THE COMMISSION AND THAT ARE BELOW THE RATES THE EMPLOYER WOULD OTHERWISE BE ABLE TO OBTAIN FROM ANY OTHER SOURCE FOR THE PURPOSE OF ALLOWING THE EMPLOYER TO IMPROVE, INSTALL, OR ERECT EQUIPMENT THAT REDUCES HAZARDS IN THE EMPLOYER'S WORKPLACE AND THAT PROMOTES THE HEALTH AND SAFETY OF WORKERS.

THE COMMISSION MAY NOT LOAN TO ANY EMPLOYER MORE THAN FIFTEEN THOUSAND DOLLARS PER FISCAL YEAR WITH REPAYMENT OF PRINCIPAL AND INTEREST UPON SUCH TERMS AS THE COMMISSION FIXES.

(C) THERE IS HEREBY ESTABLISHED THE OCCUPATIONAL SAFETY LOAN FUND, WHICH SHALL BE IN THE CUSTODY OF THE TREASURER OF STATE. THE FUND SHALL CONSIST OF ALL PENALTIES COLLECTED PURSUANT TO SECTION 4121.47 OF THE REVISED CODE AND SHALL BE USED BY THE COMMISSION SOLELY FOR THE PURPOSES IDENTIFIED IN THIS SECTION.

4121.63 Living maintenance payments [Eff. 8-22-86]

Claimants who the industrial commission determines could probably be rehabilitated to achieve the goals established by section 4121.61 of the Revised Code and who agree to undergo rehabilitation shall be paid living maintenance payments for a period or periods which do not exceed six months in the aggregate, unless review by the commission or its designee reveals that the claimant will be benefited by an extension of such payments.

Living maintenance payments shall be paid in weekly amounts, not to exceed the amount the claimant would receive if the claimant were being compensated for temporary total disability, but not less than fifty per cent of the current state average weekly wage.

A claimant receiving such living maintenance payments shall be deemed to be temporarily totally disabled and shall receive no payment of any type of compensation except as provided by division ~~(C)~~(B) of section 4123.57 of the Revised Code for the periods during which the claimant is receiving living maintenance payments.

4121.67 Reemployment to be encouraged; payment for wage losses of rehabilitated employee [Eff. 8-22-86]

The industrial commission shall adopt rules ~~for~~:

(A) FOR the encouragement of reemployment of claimants who have successfully completed prescribed rehabilitation programs by payment from the surplus fund established by section 4123.34 of the Revised Code to employers who employ or reemploy the claimants. The period or periods of payments shall not exceed six months in the aggregate, unless the industrial commission or its designee determines that the claimant will be benefited by an extension of payments.

(B) REQUIRING PAYMENT, IN THE SAME MANNER AS LIVING MAINTENANCE PAYMENTS ARE MADE PURSUANT TO SECTION 4121.63 OF THE REVISED CODE, TO THE CLAIMANT WHO COMPLETES A REHABILITATION TRAINING PROGRAM AND RETURNS TO EMPLOYMENT, BUT WHO SUFFERS A WAGE LOSS COMPARED TO THE WAGE THE CLAIMANT WAS RECEIVING AT THE TIME OF INJURY. PAYMENTS PER WEEK SHALL BE SIXTY-SIX AND TWO-THIRDS PER CENT OF THE DIFFERENCE, IF ANY, BETWEEN THE CLAIMANT'S WEEKLY WAGE AT THE TIME OF INJURY AND THE WEEKLY WAGE RECEIVED WHILE EMPLOYED, UP TO A MAXIMUM PAYMENT PER WEEK EQUAL TO THE STATEWIDE AVERAGE WEEKLY WAGE. THE PAYMENTS MAY CONTINUE FOR UP TO A MAXIMUM OF TWO HUNDRED WEEKS BUT SHALL BE REDUCED BY THE CORRESPONDING NUMBER OF WEEKS IN WHICH THE CLAIMANT RECEIVES PAYMENTS PURSUANT TO DIVISION (B) OF SECTION 4123.56 OF THE REVISED CODE.

4121.69 Compensation plans for commission employees not included in collective bargaining units; cooperation from other agencies; referrals to rehabilitation services commission [Eff. 8-22-86]

(A) THE INDUSTRIAL COMMISSION, WITH THE APPROVAL OF THE STATE EMPLOYEE COMPENSATION BOARD, MAY ESTABLISH COMPENSATION PLANS,

INCLUDING SCHEDULES OF HOURLY RATES, FOR THE COMPENSATION OF PROFESSIONAL, ADMINISTRATIVE, AND MANAGERIAL EMPLOYEES WHO ARE EMPLOYED TO FULFILL THE DUTIES PLACED UPON THE COMMISSION PURSUANT TO SECTIONS 4121.61 TO 4121.69 OF THE REVISED CODE. THE COMMISSION MAY ESTABLISH RULES OR POLICIES FOR THE ADMINISTRATION OF THE RESPECTIVE COMPENSATION PLANS.

THIS DIVISION DOES NOT APPLY TO EMPLOYEES FOR WHOM THE STATE EMPLOYMENT RELATIONS BOARD ESTABLISHES APPROPRIATE BARGAINING UNITS PURSUANT TO SECTION 4117.06 OF THE REVISED CODE.

(B) The industrial commission may employ the services and resources of any public entity or private person, business, or association in fulfilling the duties placed upon the industrial commission by sections 4121.61 to 4121.69 of the Revised Code. The rehabilitation services commission, the bureau of employment services, and any other public officer, employee, or agency shall give to the industrial commission full cooperation and shall at the request of the industrial commission enter into a written agreement stating the procedures and criteria for referring, accepting, and providing services to claimants in the job placement and rehabilitation efforts of the industrial commission on behalf of a claimant when referred by the industrial commission.

~~(B)~~(C) In appropriate cases, the industrial commission may refer a candidate to the rehabilitation services commission for participation in a program of the rehabilitation services commission. For that purpose, the industrial commission shall compensate the rehabilitation services commission for the nonfederal portion of its services.

4121.70 Labor-management government advisory committee [Eff. 8-22-86]

(A) THERE IS HEREBY CREATED THE LABOR-MANAGEMENT GOVERNMENT ADVISORY COMMITTEE CONSISTING OF FOURTEEN MEMBERS APPOINTED AS FOLLOWS:

(1) THE GOVERNOR, WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL APPOINT FOUR MEMBERS WHO, BY TRAINING AND VOCATION, ARE REPRESENTATIVE OF LABOR AND FOUR MEMBERS WHO, BY TRAINING AND VOCATION, ARE REPRESENTATIVE OF EMPLOYERS.

(2) EX OFFICIO, THE CHAIRMEN OF THE STANDING COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE TO WHICH LEGISLATION CONCERNED WITH WORKERS' COMPENSATION IS CUSTOMARILY REFERRED. A CHAIRMAN MAY DESIGNATE THE VICE-CHAIRMAN OF THE COMMITTEE TO SERVE IN HIS PLACE.

(3) ONE PERSON WHO BY TRAINING AND VOCATION REPRESENTS LABOR AND ONE PERSON WHO BY TRAINING AND VOCATION REPRESENTS EMPLOYERS OF DIFFERING POLITICAL PARTIES APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

(4) ONE PERSON WHO BY TRAINING AND VOCATION REPRESENTS LABOR AND ONE PERSON WHO BY TRAINING AND VOCATION REPRESENTS EMPLOYERS OF DIFFERING POLITICAL PARTIES APPOINTED BY THE PRESIDENT OF THE SENATE.

(B) MEMBERS APPOINTED BY THE GOVERNOR SHALL SERVE FOR A TERM OF SIX YEARS WITH EACH TERM ENDING ON THE SAME DAY OF THE YEAR IN WHICH THE MEMBER WAS FIRST APPOINTED, EXCEPT THAT EACH MEMBER SHALL SERVE FOR A PERIOD OF SIXTY ADDITIONAL DAYS AT THE END OF HIS TERM OR UNTIL HIS SUCCESSOR IS APPOINTED AND QUALIFIES, WHICHEVER DATE OCCURS FIRST. OF THE MEMBERS FIRST APPOINTED TO THE COMMISSION BY THE GOVERNOR, ONE MEMBER EACH REPRESENTING LABOR AND MANAGEMENT SHALL SERVE AN INITIAL TERM OF TWO YEARS, ONE MEMBER EACH REPRESENTING LABOR AND MANAGEMENT SHALL SERVE A TERM OF FOUR YEARS, AND THE REMAINING TWO MEMBERS SHALL SERVE FULL SIX-YEAR TERMS. THE MEMBERS INITIALLY APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE SHALL SERVE A TERM OF SIX YEARS. THEREAFTER, MEMBERS SHALL BE APPOINTED TO AND SERVE FULL SIX-YEAR TERMS. MEMBERS ARE ELIGIBLE FOR REAPPOINTMENT TO ANY NUMBER OF ADDITIONAL TERMS.

LEGISLATIVE MEMBERS SHALL SERVE A TERM THAT COINCIDES WITH THE TWO-YEAR LEGISLATIVE SESSION IN WHICH THEY ARE FIRST APPOINTED WITH EACH TERM ENDING ON THE THIRTY-FIRST DAY OF DECEMBER OF THE EVEN-NUMBERED YEAR. LEGISLATIVE MEMBERS ARE ELIGIBLE FOR REAPPOINTMENT.

VACANCIES ON THE COMMITTEE SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT. ALL MEMBERS OF THE COMMITTEE SHALL SERVE WITHOUT ADDITIONAL COMPENSATION BUT SHALL BE REIMBURSED BY THE INDUSTRIAL COMMISSION FOR ACTUAL AND NECESSARY EXPENSES.

THE COMMITTEE SHALL ADVISE THE INDUSTRIAL COMMISSION ON THE QUALITY AND EFFECTIVENESS OF REHABILITATION SERVICES AND MAKE RECOMMENDATIONS PERTAINING TO THE COMMISSION'S REHABILITATION PROGRAM, INCLUDING THE OPERATION OF THAT PROGRAM.

THE LABOR-MANAGEMENT GOVERNMENT ADVISORY COMMITTEE SHALL RECOMMEND TO THE COMMISSION THREE CANDIDATES FOR THE POSITION OF DIRECTOR OF REHABILITATION. THE CANDIDATES SHALL BE CHOSEN FOR THEIR ABILITY AND BACKGROUND IN THE FIELD OF REHABILITATION. THE COMMISSION SHALL SELECT A DIRECTOR FROM THE LIST OF CANDIDATES.

4121.80 Intentional tort; time limits; court to determine liability; commission to determine damages; intentional tort fund; attorney fees; definition of intentional tort; applicability [Eff. 8-22-86]

(A) IF INJURY, OCCUPATIONAL DISEASE, OR DEATH RESULTS TO ANY EMPLOYEE FROM THE INTENTIONAL TORT OF HIS EMPLOYER, THE EMPLOYEE OR THE DEPENDENTS OF A DECEASED EMPLOYEE HAVE THE RIGHT TO RECEIVE WORKERS' COMPENSATION BENEFITS UNDER CHAPTER 4123. OF THE REVISED CODE AND HAVE A CAUSE OF ACTION AGAINST THE EMPLOYER FOR AN EXCESS OF DAMAGES OVER THE AMOUNT RECEIVED OR RECEIVABLE UNDER CHAPTER 4123. OF THE REVISED CODE AND SECTION 35, ARTICLE II OF THE OHIO CONSTITUTION OR ANY BENEFIT OR AMOUNT, THE COST OF WHICH HAS BEEN PROVIDED OR WHOLLY PAID FOR BY THE EMPLOYER. THE CAUSE OF ACTION SHALL BE BROUGHT IN THE COUNTY WHERE THE INJURY WAS SUSTAINED OR THE EXPOSURE PRIMARILY CAUSING THE DISEASE ALLEGED TO BE CONTRACTED OCCURRED. THE CLAIM ON BEHALF OF THE DEPENDENTS OF A DECEASED EMPLOYEE SHALL BE ASSERTED BY THE EMPLOYEE'S ESTATE. ALL DEFENSES ARE PRESERVED FOR AND SHALL BE AVAILABLE TO THE EMPLOYER IN DEFENDING AGAINST AN ACTION BROUGHT UNDER THIS SECTION. ANY ACTION PURSUANT TO THIS SECTION SHALL BE BROUGHT WITHIN ONE YEAR OF THE

EMPLOYEE'S DEATH OR THE DATE ON WHICH THE EMPLOYEE KNEW OR THROUGH THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE KNOWN OF THE INJURY, DISEASE, OR CONDITION, WHICHEVER DATE OCCURS FIRST. IN NO EVENT SHALL ANY ACTION BE BROUGHT PURSUANT TO THIS SECTION MORE THAN TWO YEARS AFTER THE OCCURRENCE OF THE ACT CONSTITUTING THE ALLEGED INTENTIONAL TORT.

(B) IT IS DECLARED THAT ENACTMENT OF CHAPTER 4123. OF THE REVISED CODE AND THE ESTABLISHMENT OF THE WORKERS' COMPENSATION SYSTEM IS INTENDED TO REMOVE FROM THE COMMON LAW TORT SYSTEM ALL DISPUTES BETWEEN OR AMONG EMPLOYERS AND EMPLOYEES REGARDING THE COMPENSATION TO BE RECEIVED FOR INJURY OR DEATH TO AN EMPLOYEE EXCEPT AS HEREIN EXPRESSLY PROVIDED, AND TO ESTABLISH A SYSTEM WHICH COMPENSATES EVEN THOUGH THE INJURY OR DEATH OF AN EMPLOYEE MAY BE CAUSED BY HIS OWN FAULT OR THE FAULT OF A CO-EMPLOYEE; THAT THE IMMUNITY ESTABLISHED IN SECTION 35, ARTICLE II OF THE OHIO CONSTITUTION AND SECTIONS 4123.74 AND 4123.741 OF THE REVISED CODE IS AN ESSENTIAL ASPECT OF OHIO'S WORKERS' COMPENSATION SYSTEM; THAT THE INTENT OF THE LEGISLATURE IN PROVIDING IMMUNITY FROM COMMON LAW SUIT IS TO PROTECT THOSE SO IMMUNIZED FROM LITIGATION OUTSIDE THE WORKERS' COMPENSATION SYSTEM EXCEPT AS HEREIN EXPRESSLY PROVIDED; AND THAT IT IS THE LEGISLATIVE INTENT TO PROMOTE PROMPT JUDICIAL RESOLUTION OF THE QUESTION OF WHETHER A SUIT BASED UPON A CLAIM OF AN INTENTIONAL TORT PROSECUTED UNDER THE ASSERTED AUTHORITY OF THIS SECTION IS OR IS NOT AN INTENTIONAL TORT AND THEREFORE IS OR IS NOT PROHIBITED BY THE IMMUNITY GRANTED UNDER SECTION 35, ARTICLE II OF THE OHIO CONSTITUTION AND CHAPTER 4123. OF THE REVISED CODE.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR RULE TO THE CONTRARY, AND CONSISTENT WITH THE LEGISLATIVE FINDINGS OF INTENT TO PROMOTE PROMPT JUDICIAL RESOLUTION OF ISSUES OF IMMUNITY FROM LITIGATION UNDER CHAPTER 4123. OF THE REVISED CODE, THE COURT SHALL DISMISS THE ACTION:

(1) UPON MOTION FOR SUMMARY JUDGMENT, IF IT FINDS, PURSUANT TO RULE 56 OF THE RULES OF CIVIL PROCEDURE THE FACTS REQUIRED TO BE PROVED BY DIVISION (B) OF THIS SECTION DO NOT EXIST;

(2) UPON A TIMELY MOTION FOR A DIRECTED VERDICT AGAINST THE PLAINTIFF IF AFTER CONSIDERING ALL THE EVIDENCE AND EVERY INFERENCE LEGITIMATELY AND REASONABLY RAISED THEREBY MOST FAVORABLY TO THE PLAINTIFF, THE COURT DETERMINES THAT THERE IS NOT SUFFICIENT EVIDENCE TO FIND THE FACTS REQUIRED TO BE PROVEN.

(D) IN ANY ACTION BROUGHT PURSUANT TO THIS SECTION, THE COURT IS LIMITED TO A DETERMINATION AS TO WHETHER OR NOT THE EMPLOYER IS LIABLE FOR DAMAGES ON THE BASIS THAT THE EMPLOYER COMMITTED AN INTENTIONAL TORT. IF THE COURT DETERMINES THAT THE EMPLOYEE OR HIS ESTATE IS ENTITLED TO AN AWARD UNDER THIS SECTION AND THAT DETERMINATION HAS BECOME FINAL, THE INDUSTRIAL COMMISSION SHALL, AFTER HEARING, DETERMINE WHAT AMOUNT OF DAMAGES SHOULD BE AWARDED. FOR THAT PURPOSE, THE COMMISSION HAS ORIGINAL JURISDICTION. IN MAKING THAT DETERMINATION, THE COMMISSION SHALL CONSIDER THE COMPENSATION AND BENEFITS PAYABLE UNDER CHAPTER 4123. OF THE REVISED CODE AND THE NET FINANCIAL LOSS TO THE EMPLOYEE CAUSED BY THE EMPLOYER'S INTENTIONAL TORT. IN NO EVENT SHALL THE TOTAL AMOUNT TO BE RECEIVED BY THE EMPLOYEE OR HIS ESTATE FROM THE INTENTIONAL TORT AWARD BE LESS THAN FIFTY PER CENT OF NOR MORE THAN THREE TIMES THE TOTAL COMPENSATION RECEIVABLE PURSUANT TO CHAPTER 4123. OF THE REVISED CODE, BUT IN NO EVENT MAY AN AWARD UNDER THIS SECTION EXCEED ONE MILLION DOLLARS. PAYMENTS OF AN AWARD MADE PURSUANT TO THIS SECTION SHALL BE FROM THE INTENTIONAL TORT FUND. ALL LEGAL FEES, INCLUDING ATTORNEY FEES AS FIXED BY THE INDUSTRIAL COMMISSION, INCURRED BY AN EMPLOYER IN DEFENDING AN ACTION BROUGHT PURSUANT TO THIS SECTION SHALL BE PAID BY THE INTENTIONAL TORT FUND.

(E) THERE IS HEREBY ESTABLISHED AN INTENTIONAL TORT FUND, WHICH SHALL BE IN THE CUSTODY OF THE TREASURER OF STATE. EVERY PUBLIC AND PRIVATE EMPLOYER, INCLUDING SELF-INSURING EMPLOYERS, SHALL PAY INTO THE FUND ANNUALLY AN AMOUNT FIXED BY THE INDUSTRIAL COMMISSION AND BASED UPON THE MANNER OF RATE COMPUTATION ESTABLISHED BY SECTION 4123.29. OF THE REVISED CODE. THE FUND SHALL BE UNDER THE CONTROL OF THE COMMISSION AND THE COMMISSION SHALL ADOPT BY RULE PROCEDURES TO GOVERN THE RECEPTION OF CLAIMS AGAINST THE FUND PURSUANT TO THIS SECTION AND DISBURSEMENTS FROM THE FUND.

(F) THE COMMISSION SHALL MAKE RULES CONCERNING THE PAYMENT OF ATTORNEY FEES BY CLAIMANTS AND EMPLOYERS IN ACTIONS BROUGHT PURSUANT TO THIS SECTION AND SHALL PROTECT PARTIES AGAINST UNFAIR FEES. THE COMMISSION SHALL FIX THE AMOUNT OF FEES IN THE EVENT OF A CONTROVERSY IN RESPECT THERETO. THE COMMISSION AND THE BUREAU OF WORKERS' COMPENSATION SHALL PROMINENTLY DISPLAY IN ALL AREAS OF AN OFFICE WHICH CLAIMANTS FREQUENT A NOTICE TO THE EFFECT THAT THE COMMISSION HAS STATUTORY AUTHORITY TO RESOLVE FEE DISPUTES. THE COMMISSION SHALL MAKE RULES DESIGNED TO PREVENT THE SOLICITATION OF EMPLOYMENT IN THE PROSECUTION OR DEFENSE OF ACTIONS BROUGHT UNDER THIS SECTION AND MAY INQUIRE INTO THE AMOUNTS OF FEES CHARGED EMPLOYERS OR CLAIMANTS BY ATTORNEYS FOR SERVICES IN MATTERS RELATIVE TO ACTIONS BROUGHT UNDER THIS SECTION.

(G) AS USED IN THIS SECTION:

(1) "INTENTIONAL TORT" IS AN ACT COMMITTED WITH THE INTENT TO INJURE ANOTHER OR COMMITTED WITH THE BELIEF THAT THE INJURY IS SUBSTANTIALLY CERTAIN TO OCCUR.

DELIBERATE REMOVAL BY THE EMPLOYER OF AN EQUIPMENT SAFETY GUARD OR DELIBERATE MISREPRESENTATION OF A TOXIC OR HAZARDOUS SUBSTANCE IS EVIDENCE, THE PRESUMPTION OF WHICH MAY BE REBUTTED, OF AN ACT COMMITTED WITH THE INTENT TO INJURE ANOTHER IF INJURY OR AN OCCUPATIONAL DISEASE OR CONDITION OCCURS AS A DIRECT RESULT.

"SUBSTANTIALLY CERTAIN" MEANS THAT AN EMPLOYER ACTS WITH DELIBERATE INTENT TO

CAUSE AN EMPLOYEE TO SUFFER INJURY, DISEASE, CONDITION, OR DEATH.

(2) "EMPLOYER," "EMPLOYEE," AND "INJURY" HAVE THE SAME MEANINGS GIVEN THOSE TERMS IN SECTION 4123.01 OF THE REVISED CODE.

(H) THIS SECTION APPLIES TO AND GOVERNS ANY ACTION BASED UPON A CLAIM THAT AN EMPLOYER COMMITTED AN INTENTIONAL TORT AGAINST AN EMPLOYEE PENDING IN ANY COURT ON THE EFFECTIVE DATE OF THIS SECTION AND ALL CLAIMS OR ACTIONS FILED ON OR AFTER THE EFFECTIVE DATE, NOTWITHSTANDING ANY PROVISIONS OF ANY PRIOR STATUTE OR RULE OF LAW OF THIS STATE.

4123.01 Definitions [Eff. 8-22-86]

As used in Chapter 4123. of the Revised Code:

(A)(1) "Employee," "workman," or "operative" means:

~~(1)~~(a) Every person in the service of the state, or of any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations and townships, whether paid or volunteer, and wherever serving within the state or on temporary assignment outside thereof, and executive officers of boards of education, under any appointment or contract of hire, express or implied, oral or written, including any elected official of the state, or of any county, municipal corporation, or township, or members of boards of education;

~~(2)~~(b) Every person in the service of any person, firm, or private corporation, including any public service corporation, that ~~(a)~~ (i) employs one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, household workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single household and casual workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single employer, ~~but not including any officer of a family farm corporation,~~ or ~~(b)~~ (ii) is bound by any such contract of hire or by any other written contract, to pay into the state insurance fund the premiums provided by Chapter 4123. of the Revised Code.

Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the industrial commission for his employment or occupation or to elect to pay compensation directly to his injured and to the dependents of his killed employees, as provided in section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employees or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.

~~(3)~~(2) "EMPLOYEE," "WORKMAN," OR "OPERATIVE" DOES NOT MEAN:

(a) A DULY ORDAINED, COMMISSIONED, OR LICENSED MINISTER OR ASSISTANT OR ASSOCIATE MINISTER OF A CHURCH IN THE EXERCISE OF HIS MINISTRY; OR

(b) ANY OFFICER OF A FAMILY FARM CORPORATION.

If an employer is a partnership, sole proprietorship, or family farm corporation, such employer may elect to include as an "employee" within this chapter, any member of such partnership, the owner of the sole proprietorship, or the officers of the family farm corporation. In the event of such election, the employer shall serve upon the commission written notice naming the persons to be covered, include such employee's remuneration for premium purposes in all future payroll reports, and no such proprietor, or partner shall be deemed an employee within this division until such notice has been served.

For informational purposes only, the bureau of workers' compensation shall prescribe such language as it considers appropriate, on such of its forms as it considers appropriate, to advise employers of their right ~~of election~~ TO ELECT TO INCLUDE AS AN "EMPLOYEE" WITHIN THIS CHAPTER A SOLE PROPRIETOR, ANY MEMBER OF A PARTNERSHIP, OR THE OFFICERS OF A FAMILY FARM CORPORATION under ~~division (A)(3)~~ of this section and that they should check any health and disability insurance policy, or other form of health and disability plan or contract, presently covering them, or the purchase of which they may be considering, to determine whether such policy, plan, or contract excludes benefits for illness or injury that they might have elected to have covered by workers' compensation.

(B) "Employer" means:

(1) The state, including state hospitals, each county, municipal corporation, township, school district, and hospital owned by a political subdivision or subdivisions other than the state;

(2) Every person, firm, and private corporation, including any public service corporation, that (a) has in service one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, or (b) is bound by any such contract of hire or by any other written contract, to pay into the insurance fund the premiums provided by Chapter 4123. of the Revised Code.

All such employers are subject to Chapter 4123. of the Revised Code. Any member of a firm or association, who regularly performs manual labor in or about a mine, factory, or other establishment, including a household establishment, shall be considered a workman or operative in determining whether such person, firm, or private corporation, or public service corporation, has in its service, one or more workmen and the income derived from such labor shall be reported to the industrial commission as part of the payroll of such employer, and such member shall thereupon be entitled to all the benefits of an employee.

(C) "Injury" includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment. "INJURY" DOES NOT INCLUDE:

(1) PSYCHIATRIC CONDITIONS EXCEPT WHERE THE CONDITIONS HAVE ARISEN FROM AN INJURY OR OCCUPATIONAL DISEASE;

(2) INJURY OR DISABILITY CAUSED PRIMARILY BY THE NATURAL DETERIORATION OF TISSUE, AN ORGAN, OR PART OF THE BODY;

(3) INJURY OR DISABILITY INCURRED IN VOLUNTARY PARTICIPATION IN AN EMPLOYER-SPONSORED RECREATION OR FITNESS ACTIVITY IF THE EMPLOYEE SIGNS A WAIVER OF HIS RIGHT TO COMPENSATION OR BENEFITS UNDER CHAPTER 4123. OF THE REVISED CODE PRIOR TO ENGAGING IN THE RECREATION OR FITNESS ACTIVITY.

(D) "Child" includes a posthumous child and a child legally adopted prior to the injury.

(E) "Family farm corporation" means a corporation founded for the purpose of farming agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons or the spouse of persons related to each other within the fourth degree of kinship, according to the rules of the civil law, and at least one of the related persons is residing on or actively operating the farm, and none of whose stockholders are a corporation. A family farm corporation does not cease to qualify under this division where, by reason of any devise, bequest, or the operation of the laws of descent or distribution, the ownership of shares of voting stock is transferred to another person, as long as that person is within the degree of kinship stipulated in this division.

4123.28 Record of injuries and occupational diseases; report; failure to file report [Eff. 8-22-86]

Every employer in this state shall keep a record of all injuries and occupational diseases, fatal or otherwise, received or contracted

by his employees in the course of their employment and resulting in seven days or more of total disability. Within a week after ~~the occurrence~~ ACQUIRING KNOWLEDGE of such an injury or death therefrom, and in the event of occupational disease or death therefrom, within one week after ~~the occurrence~~ ACQUIRING KNOWLEDGE of or diagnosis of or death from said occupational disease or of a report to such employer of such occupational disease or death, a report thereof shall be made in writing to the industrial commission upon blanks to be procured from the commission for that purpose. Such report shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address, nature and duration of occupation of the injured, disabled, or deceased employee and, the time, the nature, and the cause of injury, occupational disease, or death, and such other information as is required by the commission.

The employer shall give a copy of each such report to the employee it concerns or his surviving dependents.

No employer shall refuse or neglect to make any report required by this section.

EACH DAY THAT AN EMPLOYER FAILS TO FILE A REPORT REQUIRED BY THIS SECTION CONSTITUTES AN ADDITIONAL DAY WITHIN THE TIME PERIOD GIVEN TO A CLAIMANT BY THE APPLICABLE STATUTE OF LIMITATIONS FOR THE FILING OF A CLAIM BASED ON THE INJURY OR OCCUPATIONAL DISEASE, PROVIDED THAT A FAILURE TO FILE A REPORT SHALL NOT EXTEND THE APPLICABLE STATUTE OF LIMITATIONS FOR MORE THAN TWO ADDITIONAL YEARS.

4123.29 Rates of premium; state insurance fund; alternative premium plans; duty to disseminate information [Eff. 8-22-86]

(A) The industrial commission shall classify occupations or industries with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total payroll in each of said classes of occupation or industry sufficiently large to provide a fund for the compensation provided for in Chapter 4123. of the Revised Code, and to maintain a state insurance fund from year to year. The rates shall be set at a level that assures the solvency of the fund. Where the payroll cannot be obtained or, in the opinion of the commission, is not an adequate measure for determining the premium to be paid for the degree of hazard, the commission may determine the rates of premium upon such other basis, consistent with insurance principles, as is equitable in view of the degree of hazard, and whenever in such sections reference is made to payroll or expenditure of wages with reference to fixing premiums, such reference shall be construed to have been made also to such other basis for fixing the rates of premium as the commission may determine under this section.

The commission in setting or revising rates shall furnish to employers an adequate explanation of the basis for the rates set.

(B) THE COMMISSION, IN CONJUNCTION WITH THE BUREAU OF WORKERS' COMPENSATION, SHALL DEVELOP AND MAKE AVAILABLE TO EMPLOYERS WHO ARE PAYING PREMIUMS TO THE STATE INSURANCE FUND ALTERNATIVE PREMIUM PLANS. ALTERNATIVE PREMIUM PLANS SHALL INCLUDE RETROSPECTIVE RATING PLANS. THE COMMISSION MAY MAKE AVAILABLE PLANS UNDER WHICH AN ADVANCED DEPOSIT MAY BE APPLIED AGAINST A SPECIFIED DEDUCTIBLE AMOUNT PER CLAIM, AND A PLAN THAT GROUPS, FOR RATING PURPOSES, EMPLOYERS OF SIMILAR SIZE AND RISK, AND POOLS THE RISK OF THE EMPLOYERS WITHIN THE GROUP. IN NO EVENT SHALL THIS BE CONSTRUED AS GRANTING TO AN EMPLOYER THE PRIVILEGE TO PAY COMPENSATION OR BENEFITS DIRECTLY.

THE COMMISSION, IN CONJUNCTION WITH THE BUREAU, SHALL DEVELOP CLASSIFICATIONS OF OCCUPATIONS OR INDUSTRIES THAT ARE SUFFICIENTLY DISTINCT SO AS NOT TO GROUP EMPLOYERS IN CLASSIFICATIONS THAT UNFAIRLY REPRESENT THE RISKS OF EMPLOYMENT WITH THE EMPLOYER.

(C) THE ADMINISTRATOR SHALL GENERALLY PROMOTE EMPLOYER PARTICIPATION IN THE STATE INSURANCE FUND THROUGH THE REGULAR DISSEMINATION OF INFORMATION TO ALL CLASSES OF EMPLOYERS DESCRIBING THE ADVANTAGES AND BENEFITS OF OPTING TO MAKE PREMIUM PAYMENTS TO THE FUND. TO THAT END, THE ADMINISTRATOR SHALL REGULARLY MAKE EMPLOYERS AWARE OF THE VARIOUS WORKERS' COMPENSATION PREMIUM PACKAGES DEVELOPED AND OFFERED PURSUANT TO THIS SECTION.

4123.34 Premium rates fixed and maintained; accounting; surplus; revisions of rates; premium payment security fund; discounts [Eff. 8-22-86]

The industrial commission, in the exercise of the powers and discretion conferred upon it in section 4123.29 of the Revised Code, shall fix and maintain, for each class of occupation, or industry, the lowest possible rates of premium consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury, occupational disease, and death that it may authorize to be paid from the state insurance fund for the benefit of injured, diseased, and the dependents of killed employees. In establishing rates, the commission shall take into account the necessity of ensuring sufficient money is set aside in the premium payment security fund to cover any defaults in premium obligations. The commission shall observe the following requirements in classifying occupations or industries and fixing the rates of premium for the risks of the same:

(A) It shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries, and the losses on account of injuries, occupational disease, and death of employees thereof, and it shall also keep an account of the money received from each individual employer and the amount of losses incurred against the state insurance fund on account of injuries, occupational disease, and death of the employees of such employer.

(B) Ten per cent of the money paid into the state insurance fund shall be set aside for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars, after which time, whenever necessary in the judgment of the commission to guarantee a solvent state insurance fund, a sum not exceeding five per cent of all the money paid into the state insurance fund shall be credited to such surplus fund. A revision of basic rates shall be made annually on the first day of July.

Revisions of basic rates shall be in accordance with the oldest four of the last five calendar years of the combined accident and occupational disease experience of the commission in the administration of sections 4123.01 to 4123.94 of the Revised Code, as shown by the accounts kept as provided in this section; and the commission shall adopt rules governing said rates revisions, the object of which shall be to make an equitable distribution of losses among the several classes of occupation or industry, which rules shall be general in their application.

(C) The commission may apply that form of rating system which it finds is best calculated to merit rate or individually rate the risk more equitably, predicated upon the basis of its individual industrial accident and occupational disease experience, and may encourage and stimulate accident prevention. The commission shall develop fixed and equitable rules controlling the rating system, which rules shall conserve to each risk the basic principles of workers' compensation insurance.

(D) The commission, from the money paid into the state insurance fund, shall set aside into an account of the state insurance fund titled a premium payment security fund sufficient money to

pay for any premiums due from an employer and uncollected which are in excess of the employer's premium security deposit.

(E) THE COMMISSION MAY GRANT DISCOUNTS ON PREMIUM RATES FOR EMPLOYERS WHO HAVE NOT INCURRED A COMPENSABLE INJURY FOR ONE YEAR OR MORE AND WHO:

(1) MAINTAIN AN EMPLOYEE SAFETY COMMITTEE OR SIMILAR ORGANIZATION; OR

(2) MAKE PERIODIC SAFETY INSPECTIONS OF THE WORKPLACE.

The fund shall be in the custody of the treasurer of state and disbursements therefrom shall be made by the bureau of workers' compensation upon order of the industrial commission to the state insurance fund. The use of the moneys held by the premium payment security fund shall be restricted to reimbursement to the state insurance fund of premiums due and uncollected in excess of an employer's premium security deposit. The moneys constituting the premium payment security fund shall be maintained without regard to or reliance upon any other fund. This section does not prevent the deposit or investment of the premium payment security fund with any other fund created by Chapter 4123. of the Revised Code, but the premium payment security fund shall be separate and distinct for every other purpose and a strict accounting thereof shall be maintained.

4123.343 Compensation for handicapped employees; statutory surplus fund; hearings; direct payments to employee or dependents [Eff. 8-22-86]

This section shall be construed liberally to the end that employers shall be encouraged to employ and retain in their employment handicapped employees as defined in this section.

(A) As used in this section, "handicapped employee" means an employee who is afflicted with or subject to any physical or mental impairment, or both, whether congenital or due to an injury or disease of such character that the impairment constitutes a handicap in obtaining employment or would constitute a handicap in obtaining reemployment if the employee should become unemployed and whose handicap is due to any of the following diseases or conditions:

(1) Epilepsy;

(2) Diabetes;

(3) Cardiac disease;

(4) Arthritis;

(5) Amputated foot, leg, arm or hand;

(6) Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than seventy-five per cent bilaterally;

(7) Residual disability from poliomyelitis;

(8) Cerebral palsy;

(9) Multiple sclerosis;

(10) Parkinson's disease;

(11) Cerebral vascular accident;

(12) Tuberculosis;

(13) Silicosis;

(14) Psycho-neurotic disability following treatment in a recognized medical or mental institution;

(15) Hemophilia;

(16) Chronic osteomyelitis;

(17) Ankylosis of joints;

(18) Hyper insulinism;

(19) Muscular dystrophies;

(20) Arterio-sclerosis;

(21) Thrombo-phlebitis;

(22) Varicose veins;

(23) Cardiovascular ~~and~~, pulmonary, OR RESPIRATORY diseases of a fire fighter OR POLICE OFFICER employed by a municipal corporation or township as a regular member of a lawfully constituted POLICE DEPARTMENT OR fire department;

(24) Coal miners' pneumoconiosis, commonly referred to as "black lung disease";

(25) Disability with respect to which an individual has completed a rehabilitation program conducted pursuant to sections 4121.61 to 4121.69 of the Revised Code.

(B) Under the circumstances set forth in this section all or such portion as the commission shall determine of the compensation and benefits paid in any claim arising hereafter shall be charged to and paid from the statutory surplus fund created under section 4123.34 of the Revised Code and only the portion remaining shall be merit-rated or otherwise treated as part of the accident or occupational disease experience of the employer. If the employer is a self-insurer, the proportion of such costs whether charged to such statutory surplus fund in whole or in part shall be by way of direct payment to such employee or his dependents or by way of reimbursement to the self-insurer as the circumstances shall indicate. The provisions of this section are applicable only in cases of death, total disability, whether temporary or permanent, and all disabilities compensated under division ~~(C)~~(B) of section 4123.57 of the Revised Code. The commission shall adopt rules specifying the grounds upon which charges to the statutory surplus fund are to be made. The rules shall prohibit as a grounds any agreement between employer and claimant as to the merits of a claim and the amount of the charge.

(C) Any employer who advises the industrial commission prior to the occurrence of an injury or occupational disease that it has in its employ a handicapped employee as defined in this section shall be entitled, in the event such a person is injured, to a determination hereunder. Any employer who fails to so notify the commission but makes application for a determination hereunder shall be entitled to a determination if the commission finds that there was good cause for the failure to give notice of the employment of such a handicapped employee. The commission shall, annually require employers to file an inventory of current handicapped employees.

Application for such determination shall only be made in cases where a handicapped employee as defined in this section or his dependents claims or is receiving an award of compensation as a result of an injury or occupational disease occurring or contracted on or after the date on which division (A) of this section first included the handicap of such employee.

Upon the filing of such an application a staff hearing officer of the industrial commission shall hold a hearing in accordance with rules promulgated by the commission and render a determination in the commission's name. The administrator of the bureau of workers' compensation shall be notified of all applications, and he or a designated assistant, shall represent the interest of the statutory surplus fund and may appear at the hearing on the application. The administrator may appeal to the commission the transfer as a representative of the surplus fund.

(D) The circumstances under and the manner in which such apportionment shall be made are:

(1) Whenever a handicapped employee as defined in this section is injured or disabled or dies as the result of an injury or occupational disease sustained in the course of and arising out of his employment in this state and the industrial commission awards compensation therefor and when it appears to the satisfaction of the industrial commission that the injury or occupational disease or the death resulting therefrom would not have occurred but for the pre-existing physical or mental impairment of such handicapped employee, all compensation and benefits payable on account of such disability or death shall be paid from such surplus fund.

(2) Whenever a handicapped employee as defined in this section is injured or disabled or dies as a result of an injury or occupational disease and the commission finds that said injury or occupational disease would have been sustained or suffered without regard to the employee's pre-existing impairment but that the resulting disability or death was caused at least in part through aggravation of such employee's pre-existing disability, the commission shall determine in a manner which is equitable and reasonable and based upon medical evidence the amount of disability or proportion of the cost of the death award which is attributable to the employee's pre-existing disability and the amount so found shall be charged to such statutory surplus fund.

(E) The benefits and provisions of this section shall apply only to employers who have complied with the workers' compensation act either through insurance with the state fund or by obtaining permission to pay compensation directly under section 4123.35 of the Revised Code.

(F) NO EMPLOYER SHALL IN ANY YEAR RECEIVE CREDIT UNDER THIS SECTION IN AN AMOUNT GREATER THAN THE PREMIUM HE PAID IF A STATE FUND EMPLOYER OR GREATER THAN HIS ASSESSMENTS IF A SELF-INSURING EMPLOYER.

(G) EMPLOYERS GRANTED PERMISSION TO PAY COMPENSATION DIRECTLY UNDER SECTION 4123.35 OF THE REVISED CODE MAY, FOR ALL CLAIMS MADE AFTER JANUARY 1, 1987, FOR COMPENSATION AND BENEFITS UNDER THIS SECTION, PAY THE COMPENSATION AND BENEFITS DIRECTLY TO THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS. IF AN EMPLOYER CHOOSES TO PAY COMPENSATION AND BENEFITS DIRECTLY, HE SHALL RECEIVE NO MONEY OR CREDIT FROM THE SURPLUS FUND FOR THE PAYMENT UNDER THIS SECTION, NOR SHALL HE BE REQUIRED TO PAY ANY AMOUNTS INTO THE SURPLUS FUND THAT OTHERWISE WOULD BE ASSESSED FOR HANDICAPPED REIMBURSEMENTS FOR CLAIMS MADE AFTER JANUARY 1, 1987. WHERE AN EMPLOYER ELECTS TO PAY FOR COMPENSATION AND BENEFITS PURSUANT TO THIS SECTION, HE SHALL ASSUME RESPONSIBILITY FOR COMPENSATION AND BENEFITS ARISING OUT OF CLAIMS MADE PRIOR TO JANUARY 1, 1987, AND SHALL NOT BE REQUIRED TO PAY ANY AMOUNTS INTO THE SURPLUS FUND AND MAY NOT RECEIVE ANY MONEY OR CREDIT FROM THAT FUND ON ACCOUNT OF THIS SECTION.

4123.35 Payments to state insurance fund; standards, surety bonds, applications, and rules for self-insurers [Eff. 8-22-86]

(A) Except as provided in this section, every employer mentioned in division (B) (2) of section 4123.01 of the Revised Code, and every publicly owned utility shall semiannually in the months of January and July pay into the state insurance fund the amount of premium fixed by the industrial commission for the employment or occupation of such employer, the amount of which premium to be so paid by each such employer to be determined by the classifications, rules, and rates made and published by said commission. Such employer shall semiannually pay such further sum of money into the state insurance fund as may be ascertained to be due from him by applying the rules of said commission, and a receipt or certificate certifying that such payment has been made shall immediately be mailed to such employer by the commission, which receipt or certificate, attested by the seal of said commission, is prima-facie evidence of the payment of such premium.

The bureau of workers' compensation shall verify with the secretary of state the existence of all corporations and organizations making application for workers' compensation coverage and shall require every such application to include the employer's federal identification number.

An employer as defined in division (B)(2) of section 4123.01 of the Revised Code who has contracted with a subcontractor shall be liable for the unpaid premium due from any such subcontractor with respect to that part of the payroll of the subcontractor which is for work performed pursuant to the contract with such employer.

Provided, that as to all employers who were subscribers to the state insurance fund prior to January 1, 1914, or who may first become subscribers to said fund in any other month than January or July, ~~the first paragraph of this section~~ THIS DIVISION providing for the payment of such premiums semiannually ~~do~~ DOES not apply, but such semiannual premiums shall be paid by such employers from time to time upon the expiration of the respective periods for which payments into the fund have been made by them.

(B) Provided, that such employers and publicly owned utilities who will abide by the rules of the commission and who may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, may, upon a finding of such facts by the commission, be granted the privilege to pay individually such compensation, and furnish such medical, surgical, nursing, and hospital services and attention and funeral expenses directly to such injured employees or the dependents of such killed employees. The commission may charge employers or publicly owned utilities who apply for the privilege of paying compensation directly a reasonable application fee to cover the commission's costs in connection with processing and making a determination with respect to an application. ALL EMPLOYERS GRANTED THE PRIVILEGE TO PAY COMPENSATION DIRECTLY SHALL DEMONSTRATE SUFFICIENT FINANCIAL AND ADMINISTRATIVE ABILITY TO ASSURE THAT ALL OBLIGATIONS UNDER THIS SECTION ARE PROMPTLY MET. THE COMMISSION SHALL DENY THE PRIVILEGE WHERE THE EMPLOYER IS UNABLE TO DEMONSTRATE HIS ABILITY TO PROMPTLY MEET ALL THE OBLIGATIONS IMPOSED ON HIM BY THIS SECTION. THE COMMISSION SHALL CONSIDER, BUT IS NOT LIMITED TO, THE FOLLOWING FACTORS, WHERE APPLICABLE, IN DETERMINING THE EMPLOYER'S ABILITY TO MEET ALL OF THE OBLIGATIONS IMPOSED ON HIM BY THIS SECTION:

(1) THE EMPLOYER EMPLOYS A MINIMUM OF FIVE HUNDRED EMPLOYEES IN THIS STATE;

(2) THE EMPLOYER HAS OPERATED IN THIS STATE FOR A MINIMUM OF TWO YEARS, PROVIDED THAT AN EMPLOYER WHO HAS PURCHASED, ACQUIRED, OR OTHERWISE SUCCEEDED TO THE OPERATION OF A BUSINESS, OR ANY PART THEREOF, SITUATED IN THIS STATE THAT HAS OPERATED FOR AT LEAST TWO YEARS IN THIS STATE, SHALL ALSO QUALIFY;

(3) WHERE THE EMPLOYER PREVIOUSLY CONTRIBUTED TO THE STATE INSURANCE FUND OR IS A SUCCESSOR EMPLOYER AS DEFINED BY COMMISSION RULES, THE AMOUNT OF THE BUY-OUT, AS DEFINED BY COMMISSION RULES;

(4) THE SUFFICIENCY OF THE EMPLOYER'S ASSETS LOCATED IN THIS STATE TO INSURE THE EMPLOYER'S SOLVENCY IN PAYING COMPENSATION DIRECTLY;

(5) THE FINANCIAL RECORDS, DOCUMENTS, AND DATA, CERTIFIED BY A CERTIFIED PUBLIC ACCOUNTANT, NECESSARY TO PROVIDE THE EMPLOYER'S FULL FINANCIAL DISCLOSURE. THE RECORDS, DOCUMENTS, AND DATA INCLUDE, BUT ARE NOT LIMITED TO, BALANCE SHEETS AND PROFIT AND LOSS HISTORY FOR THE CURRENT YEAR AND PREVIOUS FOUR YEARS.

(6) THE EMPLOYER'S ORGANIZATIONAL PLAN FOR THE ADMINISTRATION OF THE WORKERS' COMPENSATION LAW;

(7) THE EMPLOYER'S PROPOSED PLAN TO INFORM EMPLOYEES OF THE CHANGE FROM A STATE FUND INSURER TO A SELF-INSURER, THE PROCEDURES THE EMPLOYER WILL FOLLOW AS A SELF-INSURER, AND THE EMPLOYEES' RIGHTS TO COMPENSATION AND BENEFITS; AND

(8) THE EMPLOYER HAS EITHER AN ACCOUNT IN A FINANCIAL INSTITUTION IN THIS STATE, OR IF THE EMPLOYER MAINTAINS AN ACCOUNT WITH A FINANCIAL INSTITUTION OUTSIDE THIS STATE, ENSURES

THAT WORKERS' COMPENSATION CHECKS ARE DRAWN FROM THE SAME ACCOUNT AS PAYROLL CHECKS OR THE EMPLOYER CLEARLY INDICATES THAT PAYMENT WILL BE HONORED BY A FINANCIAL INSTITUTION IN THIS STATE.

THE COMMISSION MAY WAIVE THE REQUIREMENTS OF DIVISIONS (B)(1) AND (2) OF THIS SECTION. THE COMMISSION SHALL NOT GRANT THE PRIVILEGE TO PAY COMPENSATION DIRECTLY TO ANY PUBLIC EMPLOYER, OTHER THAN PUBLICLY OWNED UTILITIES.

(C) The commission ~~may~~ SHALL require ~~such security or~~ A SURETY bond from ~~said~~ employers and publicly owned utilities ~~as it deems proper, adequate, and~~ WHO ARE GRANTED THE PRIVILEGE TO PAY COMPENSATION DIRECTLY, ISSUED PURSUANT TO SECTION 4123.351 OF THE REVISED CODE, THAT IS sufficient to compel, or secure to ~~such~~ injured employees, or to the dependents of ~~such~~ employees as may be killed, the payment of such compensation and expenses, which shall in no event be less than that paid or furnished out of the state insurance fund in similar cases to injured employees or to dependents of killed employees whose employers contribute to said fund, except when an employee of such employer, who has suffered the loss of a hand, arm, foot, leg, or eye prior to the injury for which compensation is to be paid, and thereafter suffers the loss of any other of said members as the result of any injury sustained in the course of and arising out of his employment, the compensation to be paid by such employer and publicly owned utility shall be limited to the disability suffered in the subsequent injury, additional compensation, if any, to be paid by the commission out of the surplus created by section 4123.34 of the Revised Code. ~~Should municipal or other bonds be accepted by said commission as security for said payments, such bonds shall be deposited with the treasurer of state who shall have custody thereof and retain the same in his possession according to the conditions prescribed by the order of said commission accepting the same as security, and the treasurer of state shall retain possession of said bonds until such time as he is directed by said commission as to the manner of his disposition of the same. The~~

(D) IN ADDITION TO THE REQUIREMENTS OF THIS SECTION, THE commission shall make and publish rules governing the manner of making application and the nature and extent of the proof required to justify such finding of fact by said commission as to granting the privilege to such employers and publicly owned utilities, which rules shall be general in their application, one of which rules shall provide that all employers, including publicly owned utilities, granted the privilege to compensate directly their injured employees and the dependents of their killed employees, shall pay into the state insurance fund such amounts as are required to be credited to the surplus in division (B) of section 4123.34 of the Revised Code. EMPLOYERS SHALL SECURE DIRECTLY FROM THE COMMISSION AND BUREAU CENTRAL OFFICES APPLICATION FORMS UPON WHICH THE BUREAU SHALL STAMP A DESIGNATING NUMBER. PRIOR TO SUBMISSION OF AN APPLICATION, AN EMPLOYER SHALL MAKE AVAILABLE TO THE BUREAU, AND THE BUREAU SHALL REVIEW, THE INFORMATION DESCRIBED IN DIVISIONS (B)(1) TO (8) OF THIS SECTION. AN EMPLOYER SHALL FILE THE COMPLETED APPLICATION FORMS WITH AN APPLICATION FEE, WHICH SHALL COVER THE COSTS OF PROCESSING THE APPLICATION, AS ESTABLISHED BY THE COMMISSION, BY RULE, WITH THE BUREAU AND THE COMMISSION AT LEAST NINETY DAYS PRIOR TO THE EFFECTIVE DATE OF THE EMPLOYER'S NEW STATUS AS A SELF-INSURER. THE APPLICATION FORM SHALL NOT BE DEEMED COMPLETE UNTIL ALL THE REQUIRED INFORMATION IS ATTACHED THERETO. THE COMMISSION AND BUREAU SHALL ONLY ACCEPT APPLICATIONS WHICH CONTAIN THE REQUIRED INFORMATION.

(E) THE COMMISSION SHALL REVIEW COMPLETED APPLICATIONS WITHIN A REASONABLE TIME. IF THE COMMISSION DETERMINES TO GRANT THE PRIVILEGE OF SELF-INSURANCE, THE BUREAU SHALL ISSUE A STATEMENT, CONTAINING THE COMMISSION'S FINDINGS OF FACT, THAT IS PREPARED BY BOTH THE COMMISSION AND THE BUREAU AND SIGNED BY THE CHAIRMAN AND SECRETARY OF THE COMMISSION. IF THE COMMISSION DETERMINES NOT TO GRANT THE PRIVILEGE OF SELF-INSURANCE, THE BUREAU SHALL NOTIFY THE EMPLOYER OF THE DETERMINATION AND REQUIRE THE EMPLOYER TO CONTINUE TO PAY ITS FULL PREMIUM INTO THE STATE INSURANCE FUND. The commission also shall adopt rules: establishing a minimum level of performance as a criterion for granting AND MAINTAINING the privilege to pay compensation directly; AND fixing time limits beyond which failure of the self-insuring employer to provide for the necessary medical examinations and evaluations may not delay a decision on a claim; ~~establishing the grounds upon which the commission will hold a public hearing to evaluate the program for self-insuring employers and set forth the procedures for revocation of self-insurer status which shall include continued failure to file medical reports bearing upon the injury of the claimant and failure to pay compensation or benefits in accordance with law in a timely manner. The commission may change or modify its findings of fact, or revoke the privilege of such employer or publicly owned utility to pay compensation direct, if in its judgment such action is necessary or desirable to secure or assure a strict compliance with all the provisions of Chapter 4123. of the Revised Code, referring to the payment of compensation and the furnishing of medical, nurse, and hospital services and medicines and funeral expenses to injured employees and the dependents of killed employees.~~

(F) The commission shall adopt rules setting forth procedures for auditing the program of employers that are granted the privilege to pay compensation directly. Audits shall be conducted by the bureau of workers' compensation upon a random basis or whenever the bureau has grounds for believing that an employer is not in full compliance with commission rules or Chapter 4123. of the Revised Code. The bureau shall report its findings to the commission.

The administrator of the bureau of workers' compensation shall monitor the programs conducted by self-insuring employers, to ensure compliance with commission requirements and for that purpose, shall develop and issue to employers who pay compensation directly standardized forms for use by the employer in all aspects of the employers' direct compensation program and for reporting of information to the bureau.

The bureau shall receive and transmit to the commission and to the employer all complaints concerning any employer engaged in paying compensation directly to employees. IN THE CASE OF A COMPLAINT AGAINST A SELF-INSURING EMPLOYER, THE ADMINISTRATOR SHALL HANDLE THE COMPLAINT THROUGH THE SELF-INSURANCE SECTION OF THE BUREAU. The commission shall maintain a file by employer of all complaints received that relate to the employer. The commission shall evaluate each complaint and take appropriate action.

The commission shall adopt as a rule a prohibition against any employer who is granted the privilege to pay compensation directly from harrassing, dismissing, or otherwise disciplining any employee making a complaint which rule shall provide for a financial penalty to be levied by the commission payable by the offending employer.

(G) For the purpose of making determinations as to whether to grant self-insuring status to an employer or publicly owned utility, the commission may subscribe to and pay for a credit reporting service that offers financial and other business information about individual employers. The costs in connection with the commission's subscription or individual reports from the service about an

applicant may be included in the application fee charged employers under this section.

(H) THE COMMISSION MAY, NOTWITHSTANDING OTHER PROVISIONS OF CHAPTER 4123. OF THE REVISED CODE, PERMIT AN EMPLOYER WHO HAS BEEN GRANTED THE PRIVILEGE OF PAYING COMPENSATION DIRECTLY TO RESUME PAYMENT OF PREMIUMS TO THE STATE INSURANCE FUND WITH APPROPRIATE CREDIT MODIFICATIONS TO THE EMPLOYER'S BASIC PREMIUM RATE AS SUCH RATE IS DETERMINED PURSUANT TO SECTION 4123.29 OF THE REVISED CODE.

4123.351 Surety bond program for self-insuring employers; default by employer; self-insuring employers' surety bond fund; reinsurance; rules; state's liability [Eff. 8-22-86]

(A) EVERY EMPLOYER AND PUBLICLY OWNED UTILITY WHO IS GRANTED THE PRIVILEGE OF PAYING COMPENSATION DIRECTLY SHALL OBTAIN FROM THE INDUSTRIAL COMMISSION A SURETY BOND ISSUED PURSUANT TO THIS SECTION. THE BOND SHALL PROVIDE FOR PAYMENT FROM THE SELF-INSURING EMPLOYERS' SURETY BOND FUND TO THE COMMISSION OF ANY AMOUNTS PAID BY THE COMMISSION IN COMPENSATION OR BENEFITS TO EMPLOYEES OF THE EMPLOYER IN ORDER TO COVER ANY DEFAULT IN PAYMENT BY THE EMPLOYER. THE BOND ISSUED TO EACH EMPLOYER SHALL BE FOR A FACE AMOUNT SUFFICIENT TO COVER THE ESTIMATED POTENTIAL LIABILITY OF THAT EMPLOYER.

(B) THE COMMISSION SHALL OPERATE A SURETY BOND PROGRAM FOR SELF-INSURING EMPLOYERS. THE PROGRAM SHALL MAKE AVAILABLE TO EMPLOYERS AND PUBLICLY OWNED UTILITIES WHO ARE GRANTED THE PRIVILEGE OF PAYING COMPENSATION DIRECTLY SURETY BONDS AT RATES WHICH ARE COMPETITIVE WITH RATES OFFERED BY COMPANIES MENTIONED IN SECTION 3929.10 OF THE REVISED CODE. THE RATES ESTABLISHED EACH YEAR SHALL BE AS LOW AS POSSIBLE BUT SUCH AS WILL ASSURE SUFFICIENT RESERVES TO GUARANTEE THE PAYMENT OF ANY CLAIMS AGAINST A BOND THE COMMISSION REASONABLY ANTICIPATES WILL OCCUR. THE COMMISSION'S PROGRAM SHALL IN ALL PRACTICAL RESPECTS FUNCTION AS A SURETY BOND COMPANY BUT IS NOT SUBJECT TO SECTIONS 3929.10 TO 3929.18 OF THE REVISED CODE OR TO REGULATION BY THE SUPERINTENDENT OF INSURANCE.

(C) IF A SELF-INSURING EMPLOYER DEFAULTS, THE COMMISSION SHALL RECOVER PAYMENTS OF COMPENSATION OR BENEFITS FROM THE SELF-INSURING EMPLOYER'S SURETY BOND. PAYMENT FROM THE BOND RELIEVES THE EMPLOYER OF ANY LIABILITY FOR DAMAGES AT COMMON LAW OR BY STATUTE THAT ARISES OUT OF THE INJURY OR OCCUPATIONAL DISEASE THAT FORMS THE BASIS OF THE WORKERS' COMPENSATION CLAIM TO THE EXTENT OF THE PAYMENT.

(D)(1) THERE IS HEREBY ESTABLISHED A SELF-INSURING EMPLOYERS' SURETY BOND FUND, WHICH SHALL BE IN THE CUSTODY OF THE TREASURER OF STATE AND WHICH SHALL BE SEPARATE FROM THE OTHER FUNDS ESTABLISHED AND ADMINISTERED PURSUANT TO THIS CHAPTER. THE FUND SHALL CONSIST OF CONTRIBUTIONS AND OTHER PAYMENTS THERETO BY SELF-INSURING EMPLOYERS WHO PURCHASE A BOND TO SECURE THE PAYMENT OF COMPENSATION AND BENEFITS REQUIRED BY SECTION 4123.35 OF THE REVISED CODE. DISBURSEMENTS FROM THE FUND SHALL BE MADE BY THE INDUSTRIAL COMMISSION PURSUANT TO THIS SECTION.

(2) THE ADMINISTRATOR OF THE BUREAU OF WORKERS' COMPENSATION, SUBJECT TO THE APPROVAL OF THE COMMISSION, HAS THE SAME POWERS TO INVEST ANY OF THE SURPLUS OR RESERVE BELONGING TO THE FUND AS ARE DELEGATED TO THE ADMINISTRATOR AND THE COMMISSION UNDER SECTION 4123.44 OF THE REVISED CODE WITH RESPECT TO THE STATE INSURANCE FUND. THE COMMISSION SHALL APPLY INTEREST EARNED SOLELY TO THE REDUCTION OF PREMIUMS CHARGED TO EMPLOYERS AND TO THE PAYMENTS REQUIRED ON BONDS DUE TO DEFAULTS.

(3) IF THE COMMISSION DETERMINES THAT REINSURANCE OF THE RISKS OF THE FUND IS NECESSARY TO ASSURE SOLVENCY OF THE FUND, THE COMMISSION MAY:

(a) ENTER INTO CONTRACTS FOR THE PURCHASE OF REINSURANCE COVERAGE OF THE RISKS OF THE FUND WITH ANY COMPANY OR AGENCY AUTHORIZED BY LAW TO ISSUE CONTRACTS OF REINSURANCE;

(b) PAY THE COST OF REINSURANCE FROM THE FUND;

(c) INCLUDE THE COSTS OF REINSURANCE AS A LIABILITY AND ESTIMATED LIABILITY OF THE FUND.

(E) THE INDUSTRIAL COMMISSION MAY MAKE RULES PURSUANT TO CHAPTER 119. OF THE REVISED CODE FOR THE IMPLEMENTATION OF THIS SECTION.

(F) THE PURCHASE OF COVERAGE UNDER THIS SECTION BY SELF-INSURING EMPLOYERS IS VALID NOTWITHSTANDING THE PROHIBITIONS CONTAINED IN DIVISION (A) OF SECTION 4123.82 OF THE REVISED CODE AND IS IN ADDITION TO THE INDEMNITY CONTRACTS THAT SELF-INSURING EMPLOYERS ARE PERMITTED TO PURCHASE PURSUANT TO DIVISION (B) OF SECTION 4123.82 OF THE REVISED CODE.

(G) THE COLLECTION OF PREMIUMS, THE ADMINISTRATION OF THE PROGRAM, THE INVESTMENT OF THE MONEY IN THE SELF-INSURING EMPLOYERS' SURETY BOND FUND, AND THE PAYMENT OF LIABILITIES INCURRED BY THE SELF-INSURING EMPLOYERS' SURETY BOND FUND DO NOT CREATE ANY LIABILITY UPON THE STATE.

EXCEPT FOR A GROSS ABUSE OF DISCRETION, NEITHER THE INDUSTRIAL COMMISSION, NOR THE INDIVIDUAL MEMBERS THEREOF, NOR THE ADMINISTRATOR OF THE BUREAU OF WORKERS' COMPENSATION SHALL INCUR ANY OBLIGATION OR LIABILITY RESPECTING THE COLLECTION OF PREMIUMS, THE ADMINISTRATION OF THE PROGRAM, THE INVESTMENT OF THE FUND, OR THE PAYMENT OF LIABILITIES THEREFROM.

4123.352 Self-insuring employers evaluation board; revocation or refusal of privilege to be self-insurer; complaints against self-insurers [Eff. 8-22-86]

(A) THERE IS HEREBY CREATED THE SELF-INSURING EMPLOYERS EVALUATION BOARD CONSISTING OF THREE MEMBERS. THE MEMBER OF THE INDUSTRIAL COMMISSION REPRESENTING THE PUBLIC SHALL BE A MEMBER OF THE SELF-INSURING EMPLOYERS EVALUATION BOARD AND SHALL SERVE, EX OFFICIO, AS CHAIRMAN. THE GOVERNOR SHALL APPOINT THE REMAINING TWO MEMBERS WITH THE ADVICE AND CONSENT OF THE SENATE. ONE MEMBER SHALL BE APPOINTED WHO IS A MEMBER OF THE OHIO SELF-INSURANCE ASSOCIATION. THE REMAINING MEMBER SHALL BE REPRESENTATIVE OF LABOR.

NOT MORE THAN TWO OF THE THREE MEMBERS OF THE BOARD MAY BE OF THE SAME POLITICAL PARTY.

OF THE TWO MEMBERS ORIGINALLY APPOINTED BY THE GOVERNOR PURSUANT TO THIS SECTION, ONE SHALL BE APPOINTED FOR AN INITIAL TERM OF TWO YEARS AND ONE FOR AN INITIAL TERM OF FOUR YEARS. THEREAFTER, TERMS OF OFFICE OF THE TWO MEMBERS SHALL BE FOR FOUR YEARS, EACH TERM ENDING ON THE SAME DATE AS THE ORIGINAL DATE OF APPOINTMENT. ANY MEMBER APPOINTED TO FILL A VACANCY OCCURRING PRIOR TO THE EXPIRATION OF THE TERM FOR WHICH HIS PREDECESSOR WAS APPOINTED SHALL HOLD OFFICE FOR THE REMAINDER OF SUCH TERM. ANY MEMBER SHALL CONTINUE IN OFFICE SUBSEQUENT TO THE EXPIRATION DATE OF HIS TERM UNTIL HIS SUCCESSOR TAKES OFFICE, OR UNTIL A PERIOD OF SIXTY DAYS HAS ELAPSED, WHICHEVER OCCURS FIRST. A VACANCY IN AN UNEXPIRED TERM SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT. THE GOVERNOR MAY REMOVE ANY MEMBER PURSUANT TO SECTION 3.05 OF THE REVISED CODE.

THE COMMISSION MEMBER WHO IS ALSO A MEMBER OF THE INDUSTRIAL COMMISSION SHALL RECEIVE NO ADDITIONAL COMPENSATION BUT SHALL BE REIMBURSED FOR ACTUAL AND NECESSARY EXPENSES IN THE PERFORMANCE OF HIS DUTIES. THE TWO REMAINING MEMBERS OF THE COMMISSION SHALL RECEIVE PER DIEM COMPENSATON FIXED PURSUANT TO DIVISION (J) OF SECTION 124.15 OF THE REVISED CODE AND ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

FOR ADMINISTRATIVE PURPOSES, THE BOARD IS A PART OF THE BUREAU OF WORKERS' COMPENSATION, AND THE BUREAU SHALL FURNISH THE BOARD WITH NECESSARY OFFICE SPACE, STAFF, AND SUPPLIES. THE BOARD SHALL MEET AS REQUIRED BY THE INDUSTRIAL COMMISSION.

(B) IN ADDITION TO THE GROUNDS LISTED IN SECTION 4123.35 OF THE REVISED CODE PERTAINING TO CRITERIA FOR BEING GRANTED THE PRIVILEGE OF SELF-INSURANCE, THE GROUNDS UPON WHICH THE INDUSTRIAL COMMISSION MAY REVOKE OR REFUSE TO RENEW THE PRIVILEGE SHALL INCLUDE FAILURE TO COMPLY WITH ANY RULES OR ORDERS OF THE COMMISSION OR TO PAY CONTRIBUTIONS FOR THE SELF-INSURING EMPLOYERS' SURETY BOND FUND PROGRAM ESTABLISHED BY SECTION 4123.351 OF THE REVISED CODE, CONTINUED FAILURE TO FILE MEDICAL REPORTS BEARING UPON THE INJURY OF THE CLAIMANT, AND FAILURE TO PAY COMPENSATION OR BENEFITS IN ACCORDANCE WITH LAW IN A TIMELY MANNER. A DEFICIENCY IN ANY OF THE GROUNDS LISTED IN THIS DIVISION IS SUFFICIENT TO JUSTIFY THE COMMISSION'S REVOCATION OR REFUSAL TO RENEW THE EMPLOYER'S SELF-INSURANCE STATUS. THE COMMISSION NEED NOT REVOKE OR REFUSE TO RENEW AN EMPLOYER'S SELF-INSURANCE STATUS IF ADEQUATE CORRECTIVE ACTION IS TAKEN BY THE EMPLOYER PURSUANT TO DIVISION (C) OF THIS SECTION.

(C) THE COMMISSION SHALL REFER TO THE BOARD ALL COMPLAINTS OR ALLEGATIONS OF MISCONDUCT AGAINST A SELF-INSURING EMPLOYER OR QUESTIONS AS TO WHETHER A SELF-INSURING EMPLOYER CONTINUES TO MEET MINIMUM STANDARDS. THE BOARD SHALL INVESTIGATE AND MAY ORDER THE EMPLOYER TO TAKE CORRECTIVE ACTION IN ACCORDANCE WITH SUCH SCHEDULE AS THE BOARD FIXES. THE BOARD'S DETERMINATION IN THIS REGARD NEED NOT BE MADE BY FORMAL HEARING BUT MUST BE ISSUED IN WRITTEN FORM AND CONTAIN THE SIGNATURE OF AT LEAST TWO BOARD MEMBERS. IF THE BOARD DETERMINES, AFTER HEARING CONDUCTED PURSUANT TO CHAPTER 119. OF THE REVISED CODE AND THE RULES OF THE COMMISSION, THAT THE EMPLOYER HAS FAILED TO CORRECT THE DEFICIENCIES WITHIN THE TIME FIXED BY THE BOARD OR IS OTHERWISE IN VIOLATION OF CHAPTER 4123. OF THE REVISED CODE, THE BOARD SHALL RECOMMEND TO THE COMMISSION REVOCATION OF AN EMPLOYER'S PRIVILEGE TO SELF-INSURE OR SUCH OTHER PENALTY WHICH MAY INCLUDE, BUT IS NOT LIMITED TO, PROBATION, OR A CIVIL PENALTY NOT TO EXCEED TEN THOUSAND DOLLARS FOR EACH FAILURE. A BOARD RECOMMENDATION TO REVOKE AN EMPLOYER'S PRIVILEGE TO SELF-INSURE MUST BE BY UNANIMOUS VOTE. A RECOMMENDATION FOR ANY OTHER PENALTY SHALL BE BY MAJORITY VOTE. WHERE THE SELF-INSURING EMPLOYERS EVALUATION BOARD MAKES RECOMMENDATIONS TO THE INDUSTRIAL COMMISSION FOR DISCIPLINING A SELF-INSURING EMPLOYER, THE COMMISSION SHALL PROMPTLY AND FULLY IMPLEMENT SUCH RECOMMENDATIONS.

4123.411 Assessments for disabled workers' relief fund [Eff. 8-22-86]

(A) For the purpose of carrying out sections 4123.412 to 4123.418 of the Revised Code, the industrial commission shall levy an assessment against all employers at a rate, of at least five but not to exceed ten cents per one hundred dollars of payroll, beginning July 1, 1980, such rate to be determined annually for each employer group listed in divisions (A)(1) to ~~(D)~~(3) of this section, which will produce an amount no greater than the amount estimated by the commission to be necessary to carry out such sections for the period for which the assessment is levied. In the event the amount produced by the assessment is not sufficient to carry out such sections the additional amount necessary shall be provided from the income produced as a result of investments made pursuant to section 4123.44 of the Revised Code.

Assessments shall be levied according to the following schedule:

~~(A)~~(1) Private fund employers, except self-insured employers—in January and July of each year upon gross payrolls of the preceding six months;

~~(B)~~(2) Counties and taxing district employers therein—in January of each year upon gross payrolls of the preceding twelve months;

~~(C)~~(3) The state as an employer—in January, April, July, and October of each year upon gross payrolls of the preceding three months;

~~(D) Self-insured employers—in January and July of each year upon gross payrolls of the preceding six months.~~

Amounts assessed in accordance with this section shall be collected from each employer as prescribed in rules adopted by the industrial commission pursuant to division (E) of section 4121.13 of the Revised Code.

The moneys derived from the assessment provided for in this section shall be credited to the disabled workers' relief fund created by section 4123.412 of the Revised Code. The commission shall establish by rule classifications of employers within divisions (A)(1) to ~~(D)~~(3) of this section and shall determine rates for each class so as to fairly apportion the costs of carrying out sections 4123.412 to 4123.418 of the Revised Code.

(B) FOR ALL INJURIES AND DISABILITIES OCCURRING ON OR AFTER JANUARY 1, 1987, THE INDUSTRIAL COMMISSION, FOR THE PURPOSES OF CARRYING OUT SECTIONS 4123.412 TO 4123.418 OF THE REVISED CODE, SHALL LEVY AN ASSESSMENT

AGAINST ALL EMPLOYERS AT A RATE PER ONE HUNDRED DOLLARS OF PAYROLL, SUCH RATE TO BE DETERMINED ANNUALLY FOR EACH CLASSIFICATION OF EMPLOYER IN EACH EMPLOYER GROUP LISTED IN DIVISIONS (A)(1) TO (3) OF THIS SECTION, WHICH WILL PRODUCE AN AMOUNT NO GREATER THAN THE AMOUNT ESTIMATED BY THE COMMISSION TO BE NECESSARY TO CARRY OUT SUCH SECTIONS FOR THE PERIOD FOR WHICH THE ASSESSMENT IS LEVIED.

AMOUNTS ASSESSED IN ACCORDANCE WITH THIS DIVISION SHALL BE BILLED AT THE SAME TIME PREMIUMS ARE BILLED AND CREDITED TO THE DISABLED WORKERS' RELIEF FUND CREATED BY SECTION 4123.412 OF THE REVISED CODE. THE COMMISSION SHALL DETERMINE THE RATES FOR EACH CLASS IN THE SAME MANNER AS IT FIXES THE RATES FOR PREMIUMS PURSUANT TO SECTION 4123.29 OF THE REVISED CODE.

(C) FOR AN EMPLOYER GRANTED THE PRIVILEGE TO PAY COMPENSATION DIRECTLY THE BUREAU OF WORKERS' COMPENSATION SHALL PAY TO EMPLOYEES WHO ARE PARTICIPANTS REGARDLESS OF THE DATE OF INJURY, ANY AMOUNTS DUE TO THE PARTICIPANTS UNDER SECTION 4123.414 OF THE REVISED CODE AND SHALL BILL THE EMPLOYER, SEMIANNUALLY, FOR ALL AMOUNTS PAID TO A PARTICIPANT.

4123.413 Requirements for participation in fund [Eff. 8-22-86]

~~In order~~ TO BE ELIGIBLE to participate in said fund, a participant must be permanently and totally disabled and be receiving workers' compensation payments, the total of which, when combined with disability benefits received pursuant to The Social Security Act is less than three hundred forty-two dollars per month adjusted annually as provided in division (B) of section 4123.62 of the Revised Code.

~~No person shall participate in said fund who is receiving pursuant to section 4123.58 of the Revised Code a minimum award as defined therein.~~

4123.414 Amount of payments [Eff. 8-22-86]

Each ~~participant, except those who are receiving pursuant to section 4123.58 of the Revised Code a weekly award equivalent to no more than fifty per cent of the statewide average weekly wage or a weekly award equivalent to the participant's average weekly wage,~~ PERSON DETERMINED ELIGIBLE, PURSUANT TO SECTION 4123.413 OF THE REVISED CODE, TO PARTICIPATE IN THE DISABLED WORKERS' RELIEF FUND is entitled to receive payments, without application, from the ~~disabled workers' relief~~ fund of a monthly amount equal to the LESSER OF THE difference between three hundred forty-two dollars, adjusted annually pursuant to division (B) of section 4123.62 of the Revised Code, and ~~such lesser~~:

(1) THE amount ~~as~~ he is receiving per month as THE disability MONTHLY benefits AWARD pursuant to The Social Security Act~~, but payments from said fund shall not exceed the difference between three hundred forty-two dollars, adjusted annually pursuant to division (B) of section 4123.62 of the Revised Code, and such lesser sum as~~; OR

(2) THE AMOUNT he is receiving monthly under the workers' compensation laws for permanent and total disability~~; provided that in~~. IN determining such difference, a participant shall be considered as receiving the amount of such participant's compensation which shall have been commuted under the provisions of section 4123.64 of the Revised Code. Such payments shall be made monthly during the period in which such participant is permanently and totally disabled.

4123.512 Notification of employer; information from other parties; handling of claims [Eff. 8-22-86]

(A) Upon receipt of any claim under Chapter 4123. of the Revised Code, the administrator of the bureau of workers' compensation shall forthwith notify the employer of the claimant of the receipt of the claim and of the facts alleged therein. If the administrator shall receive from a person other than the claimant written information indicating that an injury or occupational disease has occurred or been contracted which may be compensable under Chapter 4123. of the Revised Code, the administrator shall notify the employee and the employer of such information. The receipt of such information and such notice by the administrator shall be considered an application for compensation under section 4123.84 or 4123.85 of the Revised Code. Upon receipt of a claim, the administrator shall advise the claimant of the claim number assigned and the claimant's right to representation in the processing of a claim or to elect no representation. IF A CLAIM IS DETERMINED TO BE A COMPENSABLE LOST TIME CLAIM, THE CLAIMANT AND THE EMPLOYER SHALL BE NOTIFIED OF THE AVAILABILITY OF REHABILITATION SERVICES. No bureau or industrial commission employee shall directly or indirectly convey any information in derogation of this right. This section shall in no way abrogate the administrator's responsibility to aid and assist a claimant in the filing of a claim and to advise the claimant of his rights under the law.

The administrator shall assign all claims and investigations to the district office of the bureau of workers' compensation from which investigation and determination may be made most expeditiously and the deputy administrator who is in charge of such office shall be responsible for and shall supervise and direct the prompt disposition of all claims and investigations assigned to such office.

Investigation of the facts concerning an injury or occupational disease shall be ascertained in whatever manner may be most appropriate. Statements of the employee, employer, attending physician and witnesses may be obtained in writing or may be made to the investigator orally or by telephone or telegraph accordingly as the circumstances may justify.

(B) No person who is not an employee of the bureau or industrial commission or who is not by law given access to the contents of a claims file shall have a file in his possession.

4123.515 Disputed claims; hearings; reconsideration; payment of award; repaying incorrect awards [Eff. 8-22-86]

Where there is a disputed claim, the administrator of the bureau of workers' compensation or one of his deputies shall refer that claim to the appropriate district hearing officer. The district hearing officer shall afford to the claimant and the employer an opportunity to be heard upon reasonable notice and to present testimony and facts pertinent to the claim. The district hearing officer when he deems it appropriate may compel testimony or the production of evidence that is pertinent to a violation of a specific safety requirement, identifies the cause of injury or occupational disease, or presents the circumstances of the injury or occupational disease.

The district hearing officer in any hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, but the district hearing officers and staff hearing officers shall follow the rules and guidelines established by the industrial commission.

The parties shall be required to proceed promptly and without continuances except in cases of hardship prejudicial to a party and due either to the lack of time afforded by the notice of the hearing or to other cause which the party could not be expected to foresee and provide against.

The district hearing officer shall present his decision and the reasons therefor in conformity with the requirements of division (B) of section 4121.36 of the Revised Code and shall date and forthwith mail copies thereof to the claimant and the employer and their representatives at their respective addresses.

Payment of an award made pursuant to a decision of the district hearing officer in a claim shall commence twenty days after the date of the decision except that, in all cases of a determination made under division ~~(B)~~(A) of section 4123.57 of the Revised Code, where an application for reconsideration pursuant to division ~~(B)~~(A) of section 4123.57 of the Revised Code has been filed, no payment shall be made to the claimant until a final decision on reconsideration allows compensation. In all other cases, if the decision of the district hearing officer is appealed by the employer or the administrator, the bureau shall withhold compensation and benefits during the course of the appeal to the regional board of review, but where the regional board rules in favor of the claimant, compensation and benefits shall be paid by the bureau or by the self-insuring employer whether or not further appeal is taken. If the claim is subsequently denied, payments shall be charged to the surplus fund created under division (B) of section 4123.34 of the Revised Code, and if the employer is a state risk such amount shall not be charged to the employer's experience and if the employer is a self-insurer such amount shall be paid to the self-insurer from said surplus fund.

4123.516 Appeal to regional board and industrial commission; reassignment of cases; limits on administrator's appeals [Eff. 8-22-86]

A claimant, an employer, or the administrator of the bureau of workers' compensation who is dissatisfied with a decision of the district hearing officer may appeal therefrom by filing a notice of appeal with the bureau, with a regional board of review, or with the industrial commission, within twenty days after the date of receipt of notice of the decision of the district hearing officer.

Such notice shall state the names of the claimant and the employer, the number of the claim, the date of the decision appealed from, and the fact that the appellant appeals therefrom.

Upon the filing of a notice of appeal the commission shall assign the appeal for hearing before a regional board of review accordingly as will be most convenient to the claimant and a prompt hearing and determination of the appeal and shall notify the administrator, the claimant, and the employer of such assignment. A regional board shall render a decision within two months of the filing of any appeal unless the board demonstrates to the commission adequate grounds for a reasonable delay.

WHERE THE COMMISSION DETERMINES THAT THE CURRENT CASELOAD OF A BOARD IS SUCH AS TO RESULT IN AN UNREASONABLE DELAY IN THE HEARING AND DETERMINATION OF ONE OR MORE CLAIMS, IT MAY RECALL THE CLAIMS WHICH IT HAS ASSIGNED TO THE BOARD AND ASSIGN THE CLAIMS TO ANOTHER BOARD. IN SUCH A CASE, THE COMMISSION SHALL REQUIRE THE SECOND BOARD TO MEET AT THE MEETING LOCATION OF THE FIRST BOARD.

The commission ALSO may at any ~~time~~ OTHER TIME recall any claim which it has assigned to a board and assign such claim to another board.

The decision of a regional board of review shall be the decision of the commission except where an appeal is allowed by the industrial commission under this section or by a court under section 4123.519 of the Revised Code. The administrator, the claimant, or the employer may file an appeal to the commission from a decision of a regional board within twenty days after the date of receipt of the decision.

Notice of the order of the industrial commission permitting or refusing to permit an appeal from a regional board of review shall be dated and on the same day mailed to the administrator, the claimant, and the employer.

No appeal shall be taken by the administrator in cases where the employer was represented at the hearing where the order was adopted unless the appeal is based upon questions of law or allegations of fraud. No appeal by the administrator shall be timely unless filed within twenty days following the date upon which the employer received the order from which the administrator seeks to appeal.

4123.519 Appeal to court of common pleas; venue; notice of appeal; petition; costs; repaying incorrect awards [Eff. 8-22-86]

The claimant or the employer may appeal a decision of the industrial commission or of its staff hearing officer made pursuant to division (B)(6) of section 4121.35 of the Revised Code in any injury or occupational disease case, other than a decision as to the extent of disability, to the court of common pleas of the county in which the injury was inflicted or in which the contract of employment was made if the injury occurred outside the state, OR IN WHICH THE CONTRACT OF EMPLOYMENT WAS MADE IF THE EXPOSURE OCCURRED OUTSIDE THE STATE. IN THE EVENT THAT A CLAIMANT OR EMPLOYER IS UNABLE TO PROPERLY VEST JURISDICTION IN A COURT FOR THE PURPOSES OF AN APPEAL BY THE USE OF THE JURISDICTIONAL REQUIREMENTS DESCRIBED IN THIS PARAGRAPH, THE APPELLANT THEN MAY RESORT TO THE VENUE PROVISIONS IN THE RULES OF CIVIL PROCEDURE TO VEST JURISDICTION IN A COURT. If the claim is for an occupational disease the appeal shall be to the court of common pleas of the county in which the exposure which caused the disease occurred. Like appeal may be taken from a decision of a regional board from which the commission or its staff hearing officer has refused to permit an appeal to the commission. Notice of such appeal shall be filed by the appellant with the court of common pleas within sixty days after the date of the receipt of the decision appealed from or the date of receipt of the order of the commission refusing to permit an appeal from a regional board of review. Such filings shall be the only act required to perfect the appeal and vest jurisdiction in the court.

Notice of appeal shall state the names of the claimant and the employer, the number of the claim, the date of the decision appealed from, and the fact that the appellant appeals therefrom.

The administrator of the bureau of workers' compensation, the claimant, and the employer shall be parties to such appeal and the commission shall be made a party if it makes application therefor.

The attorney general or one or more of his assistants or special counsel designated by him shall represent the administrator and the commission. In the event the attorney general or his designated assistants or special counsel are absent, the administrator or the commission shall select one or more of the attorneys in the employ of the administrator or the commission as his or its attorney in such appeal. Any attorney so employed shall continue his representation during the entire period of the appeal and in all hearings thereof except where such continued representation becomes impractical.

Upon receipt of notice of appeal the clerk of courts shall cause notice to be given to all parties who are appellees and to the commission.

The claimant shall, within thirty days after the filing of the notice of appeal, file a petition containing a statement of facts in ordinary and concise language showing a cause of action to participate or to continue to participate in the fund and setting forth the basis for the jurisdiction of the court over the action. Further pleadings shall be had in accordance with the Rules of Civil Procedure, provided that service of summons on such petition shall not be required. The clerk of the court shall, upon receipt thereof, transmit by certified mail a copy thereof to each party named in the notice of appeal other than the claimant. Any party may file with the clerk prior to the trial of the action a deposition of any physician taken in accordance with the provisions of the Revised Code, which deposition may be read in the trial of the action even though such physician is a resident of or subject to service in the county in which the trial is had. The cost of the deposition filed in court and of copies of such deposition for each party shall be paid for by the industrial commission from the surplus fund and the costs thereof charged against the unsuccessful party if the claimant's right to participate

or continue to participate is finally sustained or established in such appeal. In the event such a deposition is taken and filed, the physician whose deposition is taken shall not be required to respond to any subpoena issued in the trial of the action. The court, or the jury under the instructions of the court, if a jury is demanded, shall determine the right of the claimant to participate or to continue to participate in the fund upon the evidence adduced at the hearing of such action.

The court shall certify its decision to the commission and such certificate shall be entered in the records of the court and appeal from such judgment shall be governed by the law applicable to the appeal of civil actions.

The cost of any legal proceedings authorized by this section, including an attorney's fee to the claimant's attorney to be fixed by the trial judge in the event the claimant's right to participate or to continue to participate in the fund is established upon the final determination of an appeal, shall be taxed against the employer or the industrial commission if the industrial commission or the administrator rather than the employer contested the right of the claimant to participate in the fund. Such attorney's fee shall not exceed twenty per cent of an award up to three thousand dollars and ten per cent of all amounts in excess thereof, but in no event shall such fee exceed fifteen hundred dollars.

If the finding of the court or the verdict of the jury is in favor of the claimant's right to participate in the fund, the commission and the administrator shall thereafter proceed in the matter of the claim as if such judgment were the decision of the commission, subject to the power of modification provided by section 4123.52 of the Revised Code.

An appeal from a decision of the commission or any action filed in a case in which an award of compensation has been made shall not stay the payment of compensation under such award or payment of compensation for subsequent periods of total disability during the pendency of the appeal. In the event payments are made to a claimant which should not have been made under the decision of the appellate court, the amount thereof shall be charged to the surplus fund under division (B) of section 4123.34 of the Revised Code. In the event the employer is a state risk, such amount shall not be charged to the employer's experience. In the event the employer is a self-insurer, such amount shall be paid to the self-insurer from said surplus fund. All actions and proceedings under this section which are the subject of an appeal to the court of common pleas or the court of appeals shall be preferred over all other civil actions except election causes, irrespective of position on the calendar.

This section applies to all decisions of the commission, the administrator, or a regional board of review on November 2, 1959, and all claims filed thereafter shall be governed by sections 4123.512 to 4123.519 of the Revised Code.

Any action pending in common pleas court or any other court on ~~November 7, 1957~~ JANUARY 1, 1986 under this section shall be governed by sections 4123.514, 4123.515, 4123.516, 4123.519, and 4123.522 of the Revised Code.

4123.54 Compensation in case of injury, disease or death; agreement if work performed in another state; employers temporarily in Ohio; compensation not payable to prisoners [Eff. 8-22-86]

Every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not ~~purposely~~:

(A) PURPOSELY self-inflicted;; OR

(B) CAUSED BY THE EMPLOYEE BEING INTOXICATED OR UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE NOT PRESCRIBED BY A PHYSICIAN WHERE THE INTOXICATION OR BEING UNDER THE INFLUENCE OF THE CONTROLLED SUBSTANCE NOT PRESCRIBED BY A PHYSICIAN WAS THE PROXIMATE CAUSE OF THE INJURY,

is entitled to receive, either directly from his employer as provided in section 4123.35 of the Revised Code, or from the state insurance fund, such compensation for loss sustained on account of such injury, occupational disease or death, and such medical, nurse, and hospital services and medicines, and such amount of funeral expenses in case of death, as are provided by sections 4123.01 to 4123.94 of the Revised Code.

Whenever, with respect to an employee of an employer who is subject to and has complied with sections 4123.01 to 4123.94 of the Revised Code, there is possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in a state or states other than Ohio, the employer and the employee may agree to be bound by the laws of this state or by the laws of some other state in which all or some portion of the work of the employee is to be performed. Such agreement shall be in writing and shall be filed with the industrial commission within ten days after it is executed and shall remain in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of this state and the employer has complied with sections 4123.01 to 4123.94 of the Revised Code, then the employee is entitled to compensation and benefits regardless of where the injury occurs or the disease is contracted and the rights of the employee and his dependents under the laws of this state shall be the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of his employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and his dependents under the laws of that state shall be the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of his employment without regard to the place where the injury was sustained or the disease contracted.

If any employee or his dependents are awarded workers' compensation benefits or recover damages from the employer under the laws of another state, the amount so awarded or recovered, whether paid or to be paid in future installments, shall be credited on the amount of any award of compensation or benefits made to the employee or his dependents by the industrial commission.

If an employee is a resident of a state other than this state and is insured under the workers' compensation law or similar laws of a state other than this state, such employee and his dependents are not entitled to receive compensation or benefits under sections 4123.01 to 4123.94 of the Revised Code, on account of injury, disease, or death arising out of or in the course of employment while temporarily within this state and the rights of such employee and his dependents under the laws of such other state shall be the exclusive remedy against the employer on account of such injury, disease, or death.

COMPENSATION OR BENEFITS SHALL NOT BE PAYABLE TO A CLAIMANT DURING THE PERIOD OF CONFINEMENT OF THE CLAIMANT IN A PENAL INSTITUTION IN THIS OR ANY OTHER STATE FOR CONVICTION OF VIOLATION OF THE CRIMINAL LAW OF THIS OR ANY OTHER STATE.

4123.56 Temporary disability compensation; termination of compensation; examination; compensation for wage losses of returning employee [Eff. 8-22-86]

(A) In the case of temporary disability, an employee shall receive sixty-six and two-thirds per cent of his average weekly wage so long as such disability is total, not to exceed a maximum amount of weekly compensation which is equal to the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, and not less than a minimum amount of compensation which is equal to thirty-three and one-third per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code unless the employee's wage is less

than thirty-three and one-third per cent of the minimum statewide average weekly wage, in which event he shall receive compensation equal to his full wages; provided that for the first twelve weeks of total disability the employee shall receive compensation equal to his full weekly wage, but not to exceed a maximum amount of weekly compensation which is equal to the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code. In the case of an employer who has elected to pay compensation direct, payments shall be for a duration based upon the medical reports of the attending physician. If the employer disputes the attending physician's report, payments may be terminated only upon application and hearing by a district hearing officer. Payments shall continue pending the determination of the matter, however payment shall not be made for such period when any employee has returned to work ~~or~~, when an employee's treating physician has made a written statement that the employee is capable of returning to his former position of employment, WHEN WORK WITHIN THE PHYSICAL CAPABILITIES OF THE EMPLOYEE IS MADE AVAILABLE BY THE EMPLOYER OR ANOTHER EMPLOYER, OR WHEN THE EMPLOYEE HAS REACHED THE MAXIMUM MEDICAL IMPROVEMENT. WHERE THE EMPLOYEE IS CAPABLE OF WORK ACTIVITY, BUT HIS EMPLOYER IS UNABLE TO OFFER HIM ANY EMPLOYMENT, THE EMPLOYEE SHALL REGISTER WITH THE BUREAU OF EMPLOYMENT SERVICES, WHICH SHALL ASSIST THE EMPLOYEE IN FINDING SUITABLE EMPLOYMENT. THE TERMINATION OF TEMPORARY TOTAL DISABILITY, WHETHER BY ORDER OR OTHERWISE, DOES NOT PRECLUDE THE COMMENCEMENT OR TEMPORARY TOTAL DISABILITY AT ANOTHER POINT IN TIME IF THE EMPLOYEE AGAIN BECOMES TEMPORARILY TOTALLY DISABLED.

After two hundred weeks of temporary total disability benefits, the claimant shall be scheduled for an examination by the industrial commission medical department for an evaluation to determine whether or not the temporary disability has become permanent. Where the employer has elected to pay compensation direct, the employer shall notify the medical section immediately after payment of two hundred weeks of temporary total disability and request that the claimant be scheduled for examination by the medical section.

When the employee is awarded compensation for temporary total disability for a period for which he has received benefits under sections 4141.01 to 4141.46 of the Revised Code, an amount equal to the amount so received shall be paid by the industrial commission from said award to the bureau of employment services and shall be credited by the administrator of the bureau of employment services to the accounts of the employers to whose accounts the payment of said benefits was charged or is chargeable to the extent it was charged or is chargeable.

If any compensation ~~for temporary total disability~~ UNDER THIS SECTION has been paid for the same period or periods for which temporary nonoccupational accident and sickness insurance is or has been paid pursuant to an insurance policy or program to which the employer has made the entire contribution or payment for providing such insurance or under a nonoccupational accident and sickness program fully funded by the employer, compensation ~~for total disability~~ PAID UNDER THIS SECTION for such period or periods shall be paid only to the extent by which such payment or payments exceeds the amount of such nonoccupational insurance or program paid or payable. Offset of such compensation shall be made only upon the prior order of the bureau or industrial commission or agreement of the claimant.

(B) WHERE AN EMPLOYEE IN A CLAIM ALLOWED UNDER THIS CHAPTER SUFFERS A WAGE LOSS AS A RESULT OF RETURNING TO EMPLOYMENT OTHER THAN HIS FORMER POSITION OF EMPLOYMENT OR AS A RESULT OF BEING UNABLE TO FIND EMPLOYMENT CONSISTENT WITH THE CLAIMANT'S PHYSICAL CAPABILITIES, HE SHALL RECEIVE COMPENSATION AT SIXTY-SIX AND TWO-THIRDS OF HIS WEEKLY WAGE LOSS NOT TO EXCEED THE STATEWIDE AVERAGE WEEKLY WAGE FOR A PERIOD NOT TO EXCEED TWO HUNDRED WEEKS.

4123.57 Partial disability compensation [Eff. 8-22-86]

Partial disability compensation shall be paid as follows~~, provided, that an employee may elect as between divisions (A) and (B) of this section as to the manner of receiving the compensation set forth in this section:~~

~~(A) In case of injury or occupational disease resulting in partial disability other than those exclusively provided for under division (C) of this section, the employee shall receive per week sixty-six and two-thirds per cent of the impairment of his earning capacity which results from the injury or occupational disease during the continuance thereof, not to exceed a maximum amount of weekly compensation which is equal to the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, but not in a greater sum in the aggregate than seventeen thousand five hundred dollars.~~

Not earlier than forty weeks after the date of termination of the latest period of ~~total disability following the injury or contraction of an occupational disease~~ PAYMENTS UNDER SECTION 4123.56 OF THE REVISED CODE, or not earlier than forty weeks after the date of the injury or contraction of an occupational disease in the absence of ~~total disability~~ PAYMENTS UNDER SECTION 4123.56 OF THE REVISED CODE, the employee may file an application with the industrial commission for the determination of the percentage of his permanent partial disability resulting from the injury or occupational disease.

Whenever such application is filed, the district hearing officer shall set the application for hearing with written notices to all interested persons. ~~After hearing and determination, the employee shall file his election to receive compensation for partial disability under either division (A) or (B) of this section, and such election may thereafter be changed upon approval of the district hearing officer for good cause shown.~~

~~(B)~~(A) The district hearing officer, upon such application, shall determine the percentage of the employee's permanent disability, except such as is subject to division ~~(C)~~(B) of this section, based upon that condition of the employee resulting from the injury or occupational disease and causing permanent impairment evidenced by medical or clinical findings reasonably demonstrable. The employee shall receive sixty-six and two-thirds per cent of his average weekly wage, but not more than a maximum of thirty-three and one-third per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, per week regardless of the average weekly wage, for the number of weeks which equals such percentage of two hundred weeks. Except on application for reconsideration, review, or modification, which is filed within ten days after the date of receipt of the decision of the district hearing officer, in no instance shall the former award be modified unless it is found from such medical or clinical findings that the condition of the claimant resulting from the injury has so progressed as to have increased the percentage of permanent partial disability. An application for reconsideration so filed shall be heard by a staff hearing officer and his decision shall be final. No application for subsequent percentage determinations on the same claim for injury or occupational disease shall be accepted for review by the district hearing officer unless supported by substantial evidence of new and changed circumstances developing since the time of the hearing on the original or last determination.

No award shall be made under this division based upon a percentage of disability which, when taken with all other percentages of permanent disability, exceeds one hundred per cent. If the percentage of such permanent disability of the employee equals or exceeds ninety per cent, compensation for permanent partial disability shall be paid for two hundred weeks.

Compensation payable under ~~divisions (A) and (B) of~~ this ~~section~~ DIVISION shall accrue and be payable to the employee from

the date of last payment of compensation, or, in cases where no previous compensation has been paid, from the date of the injury or the date of the diagnosis of the occupational disease.

When an award under this division has been made prior to the death of an employee, all unpaid installments accrued or to accrue under the provisions of the award are payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of such employee, and if there are no such children surviving, then to such other dependents as the commission may determine.

~~(C)~~(B) In cases included in the following schedule the compensation payable per week to the employee shall be sixty-six and two-thirds per cent of his average weekly wage, but not more than a maximum ~~of fifty per cent of~~ EQUAL TO the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code per week regardless of the average weekly wage, and not less than ~~twenty five~~ FORTY per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code per week and shall continue during the periods provided in the following schedule:

For the loss of a thumb, sixty weeks.

For the loss of a first finger, commonly called index finger, thirty-five weeks.

For the loss of a second finger, thirty weeks.

For the loss of a third finger, twenty weeks.

For the loss of a fourth finger, commonly known as the little finger, fifteen weeks.

The loss of a second, or distal, phalange of the thumb is considered equal to the loss of one half of such thumb; the loss of more than one half of such thumb is considered equal to the loss of the whole thumb.

The loss of the third, or distal, phalange of any finger is considered equal to the loss of one-third of such finger.

The loss of the middle, or second, phalange of any finger is considered equal to the loss of two-thirds of such finger.

The loss of more than the middle and distal phalanges of any finger is considered equal to the loss of the whole finger. In no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bones of the palm) for the corresponding thumb, or fingers, add ten weeks to the number of weeks under this division.

For ankylosis (total stiffness of) or contractures (due to scars or injuries) which makes any of the fingers, thumbs, or parts of either useless, the same number of weeks apply to such members or parts thereof as given for the loss thereof.

If the claimant has suffered the loss of two or more fingers by amputation or ankylosis and the nature of his employment in the course of which the claimant was working at the time of the injury or occupational disease is such that the handicap or disability resulting from such loss of fingers, or loss of use of fingers, exceeds the normal handicap or disability resulting from such loss of fingers, or loss of use of fingers, the commission may take that fact into consideration and increase the award of compensation accordingly, but the award made in such case shall not exceed the amount of compensation for loss of a hand.

For the loss of a hand, one hundred seventy-five weeks.

For the loss of an arm, two hundred twenty-five weeks.

For the loss of a great toe, thirty weeks.

For the loss of one of the toes other than the great toe, ten weeks.

The loss of more than two-thirds of any toe is considered equal to the loss of the whole toe.

The loss of less than two-thirds of any toe is considered no loss, except as to the great toe; the loss of the great toe up to the interphalangeal joint is co-equal to the loss of one-half of the great toe; the loss of the great toe beyond the interphalangeal joint is considered equal to the loss of the whole great toe.

For the loss of a foot, one hundred fifty weeks.

For the loss of a leg, two hundred weeks.

For the loss of the sight of an eye, one hundred twenty-five weeks.

For the permanent partial loss of sight of an eye, such portion of one hundred twenty-five weeks as the commission may in each case determine, based upon the percentage of vision actually lost as a result of the injury or occupational disease, but, in no case shall an award of compensation be made for less than twenty-five per cent loss of uncorrected vision. "Loss of uncorrected vision" means the percentage of vision actually lost as the result of the injury or occupational disease.

For the permanent and total loss of hearing of one ear, twenty-five weeks; but in no case shall an award of compensation be made for less than permanent and total loss of hearing of one ear.

For the permanent and total loss of hearing, one hundred twenty-five weeks; but, except pursuant to the next preceding paragraph, in no case shall an award of compensation be made for less than permanent and total loss of hearing.

In case an injury or occupational disease results in serious facial or head disfigurement which either impairs or may in the future impair the opportunities to secure or retain employment, the commission shall make such award of compensation as it deems proper and equitable, in view of the nature of the disfigurement, and not to exceed the sum of five thousand dollars. For the purpose of making such award it shall not be material whether such employee is gainfully employed in any occupation or trade at the time of the commission's determination.

When an award under this division has been made prior to the death of an employee from a cause other than the injury or occupational disease on which the award is based, all unpaid installments accrued or to accrue under the provisions of the award shall be payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of such employee and if there are no such children, then to such dependents as the commission may determine.

When an employee has sustained the loss of a member by severance, but no award has been made on account thereof prior to his death from a cause other than the injury or occupational disease which caused such severance, the commission shall make an award in accordance with this division for such loss which shall be payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of such employee and if there be no such children, then to such dependents as the commission may determine.

~~(D)~~(C) Compensation for partial disability under divisions (A), AND (B), ~~and (C)~~ of this section shall be in addition to the compensation paid the employee ~~for the periods of temporary total disability resulting from the injury or occupational disease, but the amount of compensation paid for partial disability under division (A) of this section is not in addition to the compensation paid for permanent partial disability under division (B) or (C) of this section and the amount of compensation paid for partial disability under division (A) of this section shall be deducted from the amount of compensation payable for permanent partial disability under division (B) or (C) of this section but only one deduction shall be made if payments are made under both divisions (B) and (C) of this section for permanent partial disability involved in the same claim~~ PURSUANT TO SECTION 4123.56 OF THE REVISED CODE. A CLAIMANT MAY RECEIVE COMPENSATION UNDER DIVISIONS (A) AND (B) OF THIS SECTION.

In all cases arising under division ~~(C)~~(B) of this section, if it is determined by any one of the following: (1) the amputee clinic at University hospital, Ohio state university; (2) the rehabilitation services commission; (3) an amputee clinic or prescribing physician approved by either the administrator of the bureau of workers' compensation, or his designee, or the industrial commission or the commission's designee, that an injured or disabled employee is in need of an artificial appliance, or in need of a repair thereof, regardless of whether such appliance or repair thereof will be serviceable in the vocational rehabilitation of the injured employee, and regardless of whether such employee has returned to or can

ever again return to any gainful employment, the industrial commission shall pay the cost of such artificial appliance or repair thereof out of the surplus created by division (B) of section 4123.34 of the Revised Code.

In those cases where a rehabilitation services commission recommendation that an injured or disabled employee is in need of an artificial appliance would conflict with their state plan, adopted pursuant to the "Rehabilitation Act of 1973," 87 Stat. 355, 29 U.S.C.A. 701, the administrator, bureau of workers' compensation, or his designee, or the industrial commission or the commission's designee, may obtain a recommendation from an amputee clinic or prescribing physician that they determine appropriate.

~~(E)~~(D) If an employee makes application for a finding and the commission finds that he has contracted silicosis as defined in division (X), or coal miners' pneumoconiosis as defined in division (Y), or asbestosis as defined in division (AA) of section 4123.68 of the Revised Code, and that a change of such employee's occupation is medically advisable in order to decrease substantially further exposure to silica dust, asbestos, or coal dust and if the employee, after such finding, has changed or shall change his occupation to an occupation in which the exposure to silica dust, asbestos, or coal dust is substantially decreased, the commission shall allow to such employee ~~forty-nine dollars~~ AN AMOUNT EQUAL TO FIFTY PER CENT OF THE STATEWIDE AVERAGE WEEKLY WAGE per week for a period of thirty weeks, commencing as of the date of such discontinuance or change, and for a period of one hundred weeks immediately following the expiration of such period of thirty weeks the commission shall allow such employee sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from such change of occupation but not to exceed a maximum of ~~forty dollars and twenty-five cents~~ AN AMOUNT EQUAL TO FIFTY PER CENT OF THE STATEWIDE AVERAGE WEEKLY WAGE per week. No such employee shall be entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which such employee is employed in an occupation in which the exposure to silica dust, asbestos, or coal dust is not substantially less than the exposure in the occupation in which he was formerly employed or for any period during which such employee may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from silicosis, asbestosis, or coal miners' pneumoconiosis. An award for change of occupation for a coal miner who has contracted coal miners' pneumoconiosis may be granted under this division even though he continues his employment with the same employer, so long as his employment subsequent to the change is such that his exposure to coal dust is substantially decreased and a change of occupation is certified by the claimant as permanent. The commission may accord to such employee medical and other benefits in accordance with section 4123.66 of the Revised Code.

~~(F)~~(E) If a fire fighter or police officer makes application for a finding and the commission finds that he has contracted a cardiovascular and pulmonary disease as defined in division (W) of section 4123.68 of the Revised Code, and that a change of such fire fighter's or police officer's occupation is medically advisable in order to decrease substantially further exposure to smoke gases, chemical fumes, and other toxic vapors, and if such fire fighter, or police officer, after such finding, has changed or changes his occupation to an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is substantially decreased, the commission shall allow to such fire fighter or police officer ~~forty-nine dollars~~ AN AMOUNT EQUAL TO FIFTY PER CENT OF THE STATEWIDE AVERAGE WEEKLY WAGE per week for a period of thirty weeks, commencing as of the date of such discontinuance or change, and for a period of seventy-five weeks immediately following the expiration of such period of thirty weeks the commission shall allow such fire fighter or police officer sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from such change of occupation but not to exceed a maximum of ~~forty dollars and twenty-five cents~~ AN AMOUNT EQUAL TO FIFTY PER CENT OF THE STATEWIDE AVERAGE WEEKLY WAGE per week. No such fire fighter or police officer shall be entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which such fire fighter or police officer is employed in an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is not substantially less than the exposure in the occupation in which he was formerly employed or for any period during which such fire fighter or police officer may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from a cardiovascular and pulmonary disease. The commission may accord to such fire fighter or police officer medical and other benefits in accordance with section 4123.66 of the Revised Code.

4123.58 Compensation for permanent total disability [Eff. 8-22-86]

(A) In cases of permanent total disability, the employee shall receive an award to continue until his death in the amount of sixty-six and two-thirds per cent of his average weekly wage, but, except as otherwise provided in division (B) of this section, not more than a maximum amount of weekly compensation which is equal to sixty-six and two-thirds per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, nor not less than a minimum amount of weekly compensation which is equal to fifty per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, unless the employee's average weekly wage is less than fifty per cent of the statewide average weekly wage at the time of the injury, in which event he shall receive compensation in an amount equal to his average weekly wage.

(B) In the event the weekly workers' compensation amount when combined with disability benefits received pursuant to the Social Security Act is less than the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, then the maximum amount of weekly compensation shall be the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code. At any time that social security disability benefits terminate or are reduced, the workers' compensation award shall be recomputed to pay the maximum amount permitted under this division.

(C) The loss or loss of use of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof, constitutes total and permanent disability, to be compensated according to this section. Compensation payable under this section for permanent total disability shall be in addition to benefits payable under division ~~(C)~~(B) of section 4123.57 of the Revised Code.

4123.62 Benefit computation; adjustment to consumer price index [Eff. 8-22-86]

(A) If it is established that an injured or disabled employee was of such age and experience when injured or disabled as that under natural conditions his wages would be expected to increase, that fact may be considered in arriving at his average weekly wage.

(B) On each first day of January, the current maximum monthly benefit amounts provided in sections 4123.412, 4123.413, and 4123.414 of the Revised Code in injury cases shall be adjusted based on the United States department of labor's national consumer price index. The percentage increase in the cost of living using the index figure for the first day of September of the preceding year and the first day of September of the year preceding that year shall be applied to the maximums in effect on the preceding thirty-first day of December to obtain the increase in the cost of living during that year.

In determining the increase in the maximum benefits for any year after 1972, the base shall be the national consumer price index on the first day of September of the preceding year. The increase in the index for the applicable twelve-month period shall be determined and shall be divided by the base used. The resulting percent-

age shall be applied to the existing maximums to arrive at the new maximums.

(C) Effective January 1, 1974, and each first day of January thereafter, the current maximum weekly benefit amounts provided in sections 4123.56, 4123.58, and 4123.59, and ~~divisions (A) and (C)~~ DIVISION (B) of section 4123.57 of the Revised Code shall be adjusted based on the increase or decrease in the statewide average weekly wage.

"Statewide average weekly wage" means the average weekly earnings of all workers in Ohio employment subject to sections 4141.01 to 4141.46 of the Revised Code as determined as of the first day of September for the four full calendar quarters preceding the first day of July of each year, by the administrator of the bureau of employment services.

The statewide average weekly wage to be used for the determination of compensation for any employee who sustains an injury, or death, or who contracts an occupational disease during the subsequent calendar year beginning with the first day of January, shall be the statewide average weekly wage so determined as of the prior first day of September adjusted to the next higher even multiple of one dollar.

Any change in benefit amounts shall be effective with respect to injuries sustained, occupational diseases contracted, and deaths occurring during the calendar year for which adjustment is made.

In determining the change in the maximum benefits for any year after 1978, the base shall be the statewide average weekly wage on the first day of September of the preceding year.

4123.651 Selection of physicians by employee; payment by employer for medical services; examination of physician of employer's choice; medical information release form [Eff. 8-22-86]

(A) Any employee who is injured or disabled in the course of his employment shall have free choice to select such licensed physician as he may desire to have serve him, as well as medical, surgical, nursing, and hospital services and attention, regardless of whether or not his employer has elected under section 4123.35 of the Revised Code, to furnish medical attention to injured or disabled employees. In the event the employee of a self-insurer selects a physician or medical, surgical, nursing, or hospital services, rather than have them furnished directly by his employer, the costs of such services, subject to the approval of the commission, shall be the obligation of such employer.

(B) THE EMPLOYER OF A CLAIMANT WHO IS INJURED OR DISABLED IN THE COURSE OF HIS EMPLOYMENT MAY REQUIRE, WITHOUT COMMISSION APPROVAL, THAT THE CLAIMANT BE EXAMINED BY A PHYSICIAN OF THE EMPLOYER'S CHOICE ONE TIME UPON ANY ISSUE ASSERTED BY THE EMPLOYEE OR A PHYSICIAN OF THE EMPLOYEE'S CHOICE OR WHICH IS TO BE CONSIDERED BY THE COMMISSION. ANY FURTHER REQUESTS FOR MEDICAL EXAMINATIONS SHALL BE MADE TO THE COMMISSION WHICH SHALL CONSIDER AND RULE ON THE REQUEST. THE COST OF ANY EXAMINATIONS INITIATED BY THE EMPLOYER SHALL BE PAID BY THE EMPLOYER.

(C) THE COMMISSION SHALL PREPARE A FORM FOR THE RELEASE OF MEDICAL INFORMATION, RECORDS, AND REPORTS RELATIVE TO THE ISSUES NECESSARY FOR THE ADMINISTRATION OF A CLAIM UNDER THIS CHAPTER. THE CLAIMANT SHALL PROMPTLY PROVIDE A CURRENT SIGNED RELEASE OF SUCH INFORMATION, RECORDS, AND REPORTS WHEN REQUESTED BY THE EMPLOYER. THE EMPLOYER SHALL PROMPTLY PROVIDE COPIES OF ALL MEDICAL INFORMATION, RECORDS, AND REPORTS TO THE BUREAU OF WORKERS' COMPENSATION AND TO THE CLAIMANT OR HIS REPRESENTATIVE UPON REQUEST.

4123.66 Additional compensation [Eff. 8-22-86]

In addition to the compensation provided for in Chapter 4123. of the Revised Code, the industrial commission shall disburse and pay from the state insurance fund such amounts for medical, nurse, and hospital services and medicine as it deems proper and, in case death ensues from the injury or occupational disease, reasonable funeral expenses shall be disbursed and paid from the fund in an amount not to exceed ~~twelve~~ THIRTY-TWO hundred dollars. The commission shall reimburse anyone, whether dependent, volunteer, or otherwise, who pays the funeral expenses of any workman whose death ensues from any injury or occupational disease as provided in this section. The commission may adopt rules with respect to furnishing medical, nurse, and hospital service and medicine to injured or disabled employees entitled thereto, and for the payment therefor. In case an injury or industrial accident which injures an employee also causes damage to the employee's eyeglasses, artificial teeth or other denture, or hearing aid, or in the event an injury or occupational disease makes it necessary or advisable to replace, repair, or adjust the same, the commission shall disburse and pay a reasonable amount to repair or replace the same.

4123.68 Schedule of compensable occupational diseases; statute of limitations; referees [Eff. 8-22-86]

AS USED IN THIS SECTION AND CHAPTER 4123. OF THE REVISED CODE, "OCCUPATIONAL DISEASE" MEANS A DISEASE CONTRACTED IN THE COURSE OF EMPLOYMENT, WHICH BY ITS CAUSES AND THE CHARACTERISTICS OF ITS MANIFESTATION OR THE CONDITION OF THE EMPLOYMENT RESULTS IN A HAZARD WHICH DISTINGUISHES THE EMPLOYMENT IN CHARACTER FROM EMPLOYMENT GENERALLY, AND THE EMPLOYMENT CREATES A RISK OF CONTRACTING THE DISEASE IN GREATER DEGREE AND IN A DIFFERENT MANNER THAN THE PUBLIC IN GENERAL.

Every employee who is disabled because of the contraction of an occupational disease ~~as defined in this section,~~ or the dependent of an employee whose death is caused by an occupational disease ~~as defined in this section,~~ is entitled to the compensation provided by sections 4123.55 to 4123.59 and 4123.66 of the Revised Code subject to the modifications relating to occupational diseases contained in Chapter 4123. of the Revised Code.

The following diseases shall be considered occupational diseases and compensable as such when contracted by an employee in the course of the employment in which such employee was engaged and due to the nature of any process described in this section. A DISEASE WHICH MEETS THE DEFINITION OF AN OCCUPATIONAL DISEASE IS COMPENSABLE PURSUANT TO CHAPTER 4123. OF THE REVISED CODE THOUGH IT IS NOT SPECIFICALLY LISTED IN THIS SECTION.

SCHEDULE

Description of disease or injury and description of process:

(A) Anthrax: Handling of wool, hair, bristles, hides, and skins.

(B) Glanders: Care of any equine animal suffering from glanders; handling carcass of such animal.

(C) Lead poisoning: Any industrial process involving the use of lead or its preparations or compounds.

(D) Mercury poisoning: Any industrial process involving the use of mercury or its preparations or compounds.

(E) Phosphorous poisoning: Any industrial process involving the use of phosphorous or its preparations or compounds.

(F) Arsenic poisoning: Any industrial process involving the use of arsenic or its preparations or compounds.

(G) Poisoning by benzol or by nitro-derivatives and amido-derivatives of benzol (dinitro-benzol, anilin, and others): Any industrial process involving the use of benzol or nitro-derivatives or amido-derivatives of benzol or its preparations or compounds.

(H) Poisoning by gasoline, benzine, naphtha, or other volatile petroleum products: Any industrial process involving the use of gasoline, benzine, naphtha, or other volatile petroleum products.

(I) Poisoning by carbon bisulphide: Any industrial process involving the use of carbon bisulphide or its preparations or compounds.

(J) Poisoning by wood alcohol: Any industrial process involving the use of wood alcohol or its preparations.

(K) Infection or inflammation of the skin on contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases, or vapors: Any industrial process involving the handling or use of oils, cutting compounds or lubricants, or involving contact with dust, liquids, fumes, gases, or vapors.

(L) Epithelion cancer or ulceration of the skin or of the corneal surface of the eye due to carbon, pitch, tar, or tarry compounds: Handling or industrial use of carbon, pitch, or tarry compounds.

(M) Compressed air illness: Any industrial process carried on in compressed air.

(N) Carbon dioxide poisoning: Any process involving the evolution or resulting in the escape of carbon dioxide.

(O) Brass or zinc poisoning: Any process involving the manufacture, founding, or refining of brass or the melting or smelting of zinc.

(P) Manganese dioxide poisoning: Any process involving the grinding or milling of manganese dioxide or the escape of manganese dioxide dust.

(Q) Radium poisoning: Any industrial process involving the use of radium and other radioactive substances in luminous paint.

(R) Tenosynovitis and prepatellar bursitis: Primary tenosynovitis characterized by a passive effusion or crepitus into the tendon sheath of the flexor or extensor muscles of the hand, due to frequently repetitive motions or vibrations, or prepatellar bursitis due to continued pressure.

(S) Chrome ulceration of the skin or nasal passages: Any industrial process involving the use of or direct contact with chromic acid or bichromates of ammonium, potassium, or sodium or their preparations.

(T) Potassium cyanide poisoning: Any industrial process involving the use of or direct contact with potassium cyanide.

(U) Sulphur dioxide poisoning: Any industrial process in which sulphur dioxide gas is evolved by the expansion of liquid sulphur dioxide.

(V) Berylliosis: Berylliosis means a disease of the lungs caused by breathing beryllium in the form of dust or fumes, producing characteristic changes in the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.

Chapter 4123. of the Revised Code does not entitle an employee or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from berylliosis unless the employee has been subjected to injurious exposure to beryllium dust or fumes in his employment in this state preceding his disablement and only in the event of such disability or death resulting within eight years after the last injurious exposure; provided that such eight-year limitation shall not apply to disability or death from exposure occurring after January 1, 1976. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

Before awarding compensation for partial or total disability or death due to berylliosis, the industrial commission shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of the disability, the nature of the disability, whether permanent or temporary, the cause of death, and other medical questions connected with the claim. An employee shall submit to such examinations, including clinical and x-ray examinations, as the commission requires. In the event that an employee refuses to submit to examinations, including clinical and x-ray examinations, after notice from the commission, or in the event that a claimant for compensation for death due to berylliosis fails to produce necessary consents and permits, after notice from the commission, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialist and the expenses of examinations and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

(W) Cardiovascular ~~and~~, pulmonary, OR RESPIRATORY diseases incurred by fire fighters or police officers following exposure to HEAT, smoke, toxic gases, chemical fumes and other toxic ~~vapors~~ SUBSTANCES: Any cardiovascular ~~and~~, pulmonary, OR RESPIRATORY disease of a fire fighter or police officer caused OR INDUCED by the cumulative effect of EXPOSURE TO HEAT, the inhalation of smoke, toxic gases, chemical fumes and other toxic ~~vapors~~ SUBSTANCES in the performance of his duty SHALL CONSTITUTE A PRESUMPTION, WHICH MAY BE REFUTED BY AFFIRMATIVE EVIDENCE, THAT SUCH OCCURRED IN THE COURSE OF AND ARISING OUT OF HIS EMPLOYMENT. For the purpose of this section, "fire fighter" means any regular member of a lawfully constituted fire department of a municipal corporation or township, whether paid or volunteer, and "police officer" means any regular member of a lawfully constituted police department of a municipal corporation, township or county, whether paid or volunteer.

Chapter 4123. of the Revised Code does not entitle a fire fighter, or police officer, or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from a cardiovascular ~~and~~, pulmonary, OR RESPIRATORY disease, unless the fire fighter or police officer has been subject to injurious exposure to HEAT, smoke, toxic gases, chemical fumes, and other toxic ~~vapors~~ SUBSTANCES in his employment in this state preceding his disablement, some portion of which has been after January 1, 1967, except as provided in the last paragraph of section 4123.57 of the Revised Code.

Compensation ~~and medical, hospital, and nursing expenses~~ on account of cardiovascular ~~and~~, pulmonary, OR RESPIRATORY diseases of fire fighters and police officers are payable only in the event of temporary total disability, permanent total disability, or death, in accordance with section 4123.56, 4123.58, or 4123.59 of the Revised Code~~, and~~. MEDICAL, HOSPITAL, AND NURSING EXPENSES ARE PAYABLE IN ACCORDANCE WITH CHAPTER 4123. OF THE REVISED CODE. COMPENSATION, MEDICAL, HOSPITAL, AND NURSING EXPENSES ARE PAYABLE only in the event of such disability or death resulting within eight years after the last injurious exposure; provided that such eight-year limitation shall not apply to disability or death from exposure occurring after January 1, 1976. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

Chapter 4123. of the Revised Code does not entitle a fire fighter or police officer, or his dependents, to compensation, medical, hospital, and nursing expenses, or payment of funeral expenses for disability or death due to a cardiovascular ~~and~~, pulmonary, OR RESPIRATORY disease in the event of failure or omission on the part of the fire fighter or police officer truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

Before awarding compensation for disability or death under this division, the commission shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of disability, the cause of death, and other medical questions connected with the claim. A fire fighter or police officer shall submit to such examinations, including clinical and x-ray examinations, as the commission requires. In the event that a fire fighter or police officer refuses to submit to examinations, including clinical and x-ray examinations, after notice from the commission, or in the event that a claimant for compensation for death under this division fails to produce necessary consents and permits, after notice from the commission, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such spe-

cialists and the expenses of examination and tests shall ~~be~~ be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

(X) Silicosis: Silicosis means a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules distributed through the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.

(Y) Coal miners' pneumoconiosis: Coal miners' pneumoconiosis, commonly referred to as "black lung disease," resulting from working in the coal mine industry and due to exposure to the breathing of coal dust, and demonstrated by x-ray examination, biopsy, autopsy or other medical or clinical tests.

Chapter 4123. of the Revised Code does not entitle an employee or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from silicosis, asbestosis, or coal miners' pneumoconiosis unless the employee has been subject to injurious exposure to silica dust (silicon dioxide), asbestos, or coal dust in his employment in this state preceding his disablement, some portion of which has been after October 12, 1945, except as provided in the second to last paragraph of section 4123.57 of the Revised Code.

Compensation ~~and medical, hospital, and nursing expenses~~ on account of silicosis, asbestosis, or coal miners' pneumoconiosis are payable only in the event of temporary total disability, permanent total disability, or death, in accordance with sections 4123.56, 4123.58, and 4123.59 of the Revised Code~~, and~~. MEDICAL, HOSPITAL, AND NURSING EXPENSES ARE PAYABLE IN ACCORDANCE WITH CHAPTER 4123. OF THE REVISED CODE. COMPENSATION, MEDICAL, HOSPITAL, AND NURSING EXPENSES ARE PAYABLE only in the event of such disability or death resulting within eight years after the last injurious exposure; provided that such eight-year limitation shall not apply to disability or death occurring after January 1, 1976, and further provided that such eight-year limitation shall not apply to any asbestosis cases. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

Chapter 4123. of the Revised Code does not entitle an employee or his dependents to compensation, medical, hospital and nursing expenses, or payment of funeral expenses for disability or death due to silicosis, asbestosis, or coal miners' pneumoconiosis in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

Before awarding compensation for disability or death due to silicosis, asbestosis, or coal miners' pneumoconiosis, the commission shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of disability, the cause of death, and other medical questions connected with the claim. An employee shall submit to such examinations, including clinical and x-ray examinations, as the commission requires. In the event that an employee refuses to submit to examinations, including clinical and x-ray examinations, after notice from the commission, or in the event that a claimant for compensation for death due to silicosis, asbestosis, or coal miners' pneumoconiosis fails to produce necessary consents and permits, after notice from the commission, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialist and the expenses of examinations and tests shall be paid, if the claim is allowed, as a part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

(Z) Radiation illness: Any industrial process involving the use of radioactive materials.

Claims for compensation and benefits due to radiation illness are payable only in the event death or disability occurred within eight years after the last injurious exposure provided that such eight-year limitation shall not apply to disability or death from exposure occurring after January 1, 1976. In the event of death following continuous disability which commenced within eight years of the last injurious exposure the requirement of death within eight years after the last injurious exposure does not apply.

(AA) Asbestosis: Asbestosis means a disease caused by inhalation or ingestion of asbestos, demonstrated by x-ray examination, biopsy, autopsy, or other objective medical or clinical tests.

~~(BB) All other occupational diseases: A disease peculiar to a particular industrial process, trade, or occupation and to which an employee is not ordinarily subjected or exposed outside of or away from his employment.~~

All conditions, restrictions, limitations, and other provisions of this section, with reference to the payment of compensation or benefits on account of silicosis or coal miners' pneumoconiosis shall be applicable to the payment of compensation or benefits on account of any other occupational disease of the respiratory tract resulting from injurious exposures to dust.

The refusal to produce the necessary consents and permits for autopsy examination and testing shall not result in forfeiture of compensation provided the commission finds that such refusal was the result of bona fide religious convictions or teachings to which the claimant for compensation adhered prior to the death of the decedent.

4123.74 Employer's liability in damages [Eff. 8-22-86]

~~Employers~~ EXCEPT AS AUTHORIZED IN SECTION 4121.80 OF THE REVISED CODE, EMPLOYERS who comply with section 4123.35 of the Revised Code shall not be liable to respond in damages at common law or by statute for any injury, or occupational disease, or bodily condition, received or contracted by any employee in the course of or arising out of his employment, or for any death resulting from such injury, occupational disease, or bodily condition occurring during the period covered by such premium so paid into the state insurance fund, or during the interval of time in which such employer is permitted to pay such compensation directly to his injured employees or the dependents of his killed employees, whether or not such injury, occupational disease, bodily condition, or death is compensable under sections 4123.01 to 4123.94~~, inclusive,~~ of the Revised Code.

4123.80 Agreement to waive rights [Eff. 8-22-86]

No agreement by an employee to waive his rights to compensation under sections 4123.01 to 4123.94~~, inclusive,~~ of the Revised Code, is valid, except that ~~an~~:

(A) AN employee who is blind may waive the compensation that may become due him for injury or disability in cases where such injury or disability may be directly caused by or due to his blindness. The industrial commission may adopt and enforce rules governing the employment of such persons and the inspection of their places of employment.

(B) AN EMPLOYEE MAY WAIVE HIS RIGHTS TO COMPENSATION OR BENEFITS AS AUTHORIZED PURSUANT TO DIVISION (C)(3) OF SECTION 4123.01 OF THE REVISED CODE.

No agreement by an employee to pay any portion of the premium paid by his employer into the state insurance fund is valid.

SECTION 2. That existing sections 126.30, 4121.02, 4121.30, 4121.32, 4121.35, 4121.38, 4121.40, 4121.63, 4121.67, 4121.69, 4123.01, 4123.28, 4123.29, 4123.34, 4123.343, 4123.35, 4123.411, 4123.413, 4123.414, 4123.512, 4123.515, 4123.516, 4123.519, 4123.54, 4123.56, 4123.57, 4123.58, 4123.62, 4123.651, 4123.66, 4123.68, 4123.74, and 4123.80 of the Revised Code are hereby repealed.

SECTION 3. There is hereby created a Select Commission on Workers' Compensation Administration. The Commission shall consist of ten members appointed by the Governor with the advice and consent of the Senate. Not more than five of the members shall be of the same political party. Five members shall represent labor interests and five members shall be representative of employers.

Members shall receive per diem compensation fixed pursuant to division (J) of section 124.15 of the Revised Code together with their actual and necessary expenses.

Within thirty days after the effective date of this section, the Governor shall make appointments to the Commission and shall fix a time and place for the Commission's first meeting. At the meeting, the Commission shall organize and elect a chairman and such other officers as it deems appropriate. Thereafter, the Commission shall determine the time and place of its meetings.

The Select Commission shall secure for itself office space, staff, and supplies as it deems necessary to the proper performance of its duties. It may request the Industrial Commission to furnish space and supplies. All expenses of the Select Commission shall be paid by the Industrial Commission from the State Insurance Fund upon presentation of proper vouchers signed by the Chairman of the Select Commission.

The Select Commission shall examine the administrative structure and duties of the Industrial Commission and the Bureau of Workers' Compensation to identify any overlap or duplication of structure or duties that may be eliminated or altered so as to improve the efficiency of administration of the workers' compensation program.

The Select Commission shall make its report together with any recommendations to the Governor and to the General Assembly by not later than July 1, 1987 and shall cease to exist at that time.

SECTION 4. Within the six-month period following the effective date of this act, the industrial commission shall implement the self-insuring employer surety bond program established pursuant to section 4123.351 of the Revised Code as enacted by this act. For that purpose, the self-insuring employer shall arrange to exchange any surety bond or other security given to the commission pursuant to section 4123.35 of the Revised Code as it existed immediately prior to this act for the surety bond required under section 4123.35 of the Revised Code as enacted by this act. Until the commission effects the exchange, the security given to the commission pursuant to section 4123.35 of the Revised Code as it existed immediately prior to the amendments made by this act shall be deemed sufficient security to guarantee the liability of the self-insuring employer provided any surety bond given continues to remain effective and obligates the surety to make any necessary payments of compensation and expenses.

SECTION 5. Not later than six months after the effective date of this act, the Bureau of Workers' Compensation and Industrial Commission shall submit budgets to the Office of Budget and Management, the Legislative Budget Office of the Legislative Service Commission, the Chairman of the Finance Committee of the Senate, and the Chairman of the Finance-Appropriations Committee of the House of Representatives. The budgets shall request funds adequate to implement the revisions and modifications required by this act and shall be presented in a manner that justifies the base spending of the Bureau and the Commission as well as the increase over current spending levels. Along with the budgets, the Bureau and Commission shall submit a detailed schedule for implementing the revisions and modifications required by this act.

SECTION 6. For the purpose of ensuring sufficient funds for the Intentional Tort Fund created pursuant to section 4121.80 of the Revised Code as enacted by this act, the Administrator of the Bureau of Workers' Compensation shall transfer five million dollars from the Surplus Fund created pursuant to section 4123.34 of the Revised Code to the Intentional Tort Fund. The money transferred shall be in the nature of a loan to the Intentional Tort Fund and is hereby declared to be a proper investment of the surplus or reserve of the State Insurance Fund.

The Industrial Commission shall repay the loan to the State Insurance Fund in five equal annual installments commencing with the first calendar year following the year in which the original transfer is made. The money shall be repaid with interest equivalent to the average yield of fixed income investments of the State Insurance Fund for the six-month period ended on the last day of the month preceding the month in which the original transfer occurs.

SECTION 7. Within ninety days after the effective date of this act, the Governor shall make the initial appointments to the Self-insuring Employers Evaluation Board as required pursuant to section 4123.35 of the Revised Code as amended by this act.

SECTION 8. The Industrial Commission shall, commencing with the calendar year in which this act takes effect, and for the next succeeding nine years, write off as a loss one-tenth of the unfunded liability of the Disabled Workers' Relief Fund in existence on the effective date of this act.

SECTION 9. If any section or provision of a section or the application thereof to any person or circumstance is held invalid or unconstitutional by a court, the invalidity or unconstitutionality does not affect other provisions of the section or other sections of this act or related sections of the Revised Code or applications thereof which can be given effect without the invalid or unconstitutional provision or section or application thereof, and to this end, the provisions and sections are severable.

SECTION 10. By not later than July 1, 1987, the Administrator of the Bureau of Workers' Compensation shall adopt rules that fully implement all provisions of section 4121.44 of the Revised Code.

SECTION 11. The prohibition against the Industrial Commission granting self-insurer status to public employers contained in section 4123.35 of the Revised Code as amended by this act shall not be construed to require the revocation and does not revoke the self-insurance status of public employers who are self-insurers on the effective date of this act. Nothing herein, however, prohibits the Commission from subsequently revoking the self-insurance status of the public employer or imposing any other penalty pursuant to section 4123.352 of the Revised Code as enacted by this act.

SECTION 12. Section 126.30 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 201 and Am. H.B. 557 of the 116th General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

LSC Analysis of S.B. 307[1]

(As Reported by H. Commerce & Labor)

Editor's Note: The following analysis, by the staff of Ohio's Legislative Service Commission, is printed to assist subscribers. CAUTION: because bills are subject to possible floor amendments and conference committee changes *following* preparation of the analyses, the text of an analysis may not reflect all of the provisions of the Bill as signed into law.

Summary:

Defines "intentional tort" for purposes of the workers' compensation law; establishes procedures for employees to sue for employers' intentional torts; and creates the Intentional Tort Fund to pay for intentional tort awards against employers.

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[1]A journalized version of the bill was not available when this analysis was prepared.

Specifies legislative guidelines and criteria the Industrial Commission must use for granting to employers the privilege to self-insure their workers' compensation liability.

Creates the Self-Insuring Employers Evaluation Board to evaluate the eligibility of employers to self-insure and specifies procedures governing revocation of that privilege.

Establishes a Self-Insuring Employer's Surety Bond Fund, in lieu of current surety requirements imposed upon each self-insuring employer.

Requires the Administrator of the Bureau of Workers' Compensation to develop alternative premium programs, for state fund employers such as retrospective rating plans.

Alters the criteria governing the awarding of temporary, total disability compensation and increases the maximum "scheduled loss" compensation payments available.

Prohibits employers from violating specific safety requirements of the Industrial Commission or acts of the General Assembly and requires the Commission to assess civil penalties up to $50,000 for violations.

Establishes an Occupational Safety Loan Fund to finance low interest loans to employers to install or erect equipment that reduces workplace hazards and improves workers' health and safety.

Eliminates temporary partial disability compensation and replaces it, subject to certain conditions, with a type of wage loss compensation that reimburses injured workers who return to work with 66-⅔% of the difference between their pre-injury wages and the wages received from their new job up to a maximum equal to the statewide average weekly wage.

Removes ministers and assistant ministers from coverage under the Workers' Compensation Law.

Subjects the Industrial Commission and the Bureau of Workers' Compensation to the state Prompt Pay Law but establishes special prompt pay procedures for payments to health care providers related to workers' compensation claims.

Increases the change-of-occupation benefits available to persons suffering from cardiovascular and pulmonary diseases of police and firefighters, pneumoconiosis, silicosis, and asbestosis.

Redefines "injury" and defines "occupational disease" for purposes of workers' compensation.

Increases from $1,200 to $3,200 the federal expense payment available for deceased workers.

Creates the Select Commission on Workers' Compensation Administration to study and make recommendations regarding the duplication of the Bureau's and Commission's duties.

Requires the Industrial Commission to write off 1/10 of the unfunded liability of the Disabled Workers' Relief Fund in each of a period of ten years.

Makes numerous administrative changes and other changes in the Workers' Compensation Law.

CONTENT AND OPERATION

Workers' Compensation and Employee Suits Against Employer

Existing law confers upon employers who comply with the Workers' Compensation law immunity from civil suit by employees who sustain injury or occupational disease "in the course of or arising out of employment." Until recently, this provision was thought to bar virtually any type of civil damages suit by an employee against an employer.

Specifically, the Ohio Supreme Court has stated that:

> An employee is not precluded by Section 35, Article II of the Ohio Constitution, or by R.C. 4123.74 and 4123.741 from enforcing his common law remedies against his employer for an intentional tort ... [T]he protection afforded by the [Workers' Compensation] Act has always been for negligent acts and not for intentional tortious conduct. Indeed workers' compensation Acts were designed to improve the plight of the injured worker and to hold that intentional torts covered under the Act would be tantamount to encouraging such conduct ... *Blankenship v. Cincinnati Milacron Chemicals*, 60 Ohio St. 2d 608 (1982).

With respect to torts, the Court has stated:

> An intentional tort is an act committed with the intent to injure another, or committed with the belief that such injury is substantially certain to occur .... The receipt of workers' compensation benefits does not preclude an employee or his representative from pursuing a common-law action for damages against his employer for an intentional tort. .... An employer who has been held liable for an intentional tort is not entitled to a setoff of the award in the amount of workers' compensation benefits received by the employee or his representative. *Jones v. VIP Development Co.*, 15 Ohio St. 3d. 90 (1984).

The bill specifically declares that the enactment of the Workers' Compensation system is intended to remove from the common law tort system all disputes among employers and employees regarding compensable injuries or death and to establish a system which compensates for the injury or death of an employee whether such is the result of the fault of the employee or a co-employee. Further, the bill declares that the legislative intent in providing immunity from common law suit is intended to protect employers from litigation outside the workers' compensation system except as expressly provided.

The bill expressly provides that an employee or his dependents, who suffers an injury, occupational disease, or death resulting from the intentional tort of his employer, may receive workers' compensation benefits and maintain a cause of action against the employer for the excess of damages over the amount receivable under workers' compensation and the amount recoverable under the Ohio Constitution for violation of specific safety requirements. An "intentional tort" is defined as an act committed with the intent to injure another or committed with the belief that the injury is substantially certain to occur. "Substantially certain to occur" is defined to mean that an employer acts with deliberate intent to cause an employee to suffer injury, disease, condition, or death.

Any action for an intentional tort against an employer by an employee or his dependents must be brought within one year of the earlier of the employee's death or the date on which the employee knew or should have first known of, through the exercise of reasonable diligence, the injury, disease, or condition. In no event may any such action be brought more than two years after the occurrence of the act constituting the intentional tort. All such actions must be brought in the county where the injury was sustained or the injury primarily causing the contraction of the disease occurred. The bill specifically preserves all defenses for an employer in such an action.

The bill limits the court in an intentional tort action against an employer to the determination as to whether or not the employer is liable for damages based upon the commission of an intentional tort. Deliberate removal by the employer of safety guard equipment or deliberate misrepresentation of a toxic or hazardous substance is evidence, the presumption of which may be rebutted, of an act committed with the intent to injure another. The bill requires the court to dismiss the action if upon a motion for summary judgment, the facts required to be proved do not exist, or if upon a motion for

a directed verdict against the plaintiff, the court determines, after considering all the evidence and every inference legitimately and reasonably raised thereby most favorably to the plaintiff, there is not sufficient evidence to find the facts required to be proven. The decision will be made solely by a judge. The bill may be somewhat unclear at this point since it refers to "facts required to be proved by division (B) . . .." That division, however, is primarily a statement of legislative intent. The only possible "fact" in it is the basic question of whether or not an act of an employer is an intentional tort or not.

Subsequently, in any trial of the action, if the court determines that the employee or his estate is entitled to an award, the Industrial Commission, after the court determination is final and after a hearing, determines the amount of damages to be awarded. In this determination, the Industrial Commission has original jurisdiction and must consider the benefits payable under workers' compensation and the net financial loss to the employee caused by the employer's intentional tort. The total award to the employee or his estate may not be less than 50% nor more than three times the total compensation receivable under workers' compensation and in no event may exceed $1 million.

Payments of awards ordered by the Industrial Commission for an employer's intentional tort as well as all legal fees incurred by an employer in defending such an action, are made from the Intentional Tort Fund, created by the bill. The Intentional Tort Fund consists of monies paid into the fund by every public and private employer. The Industrial Commission annually fixes the amount for each employer to contribute to such fund "Based upon the manner of rate computation established under [the rate-making section of the law]". Presumably, this means that the Commission is to establish a surcharge that will be at a flat rate (the language, however, is capable of interpretation to allow various different rates for different classifications of employer) per $100 of payroll. The bill places the control of the fund under the Commission and requires the Commission to adopt rules for procedures governing the reception of claims and disbursements of monies from the fund.

The Administrator of the Bureau must transfer, as a loan, $5 million from the Surplus Fund to the Intentional Tort Fund. The bill requires the Industrial Commission to repay these monies in five equal installments beginning with the calendar year following the year of transfer.

The Commission also must make rules concerning the payment of attorney fees by claimants and employers and must fix the amount of fees in the event of a controversy. The Commission and the Bureau of Workers' Compensation must post a notice in their offices stating that the Commission has the authority to fix fees in the event of a dispute. The bill further requires the Commission to make rules to prevent the solicitation of employment in the prosecution or defense of intentional tort cases and may inquire into the amounts of fees charged by attorneys in such cases.

The bill specifies that all of the changes enumerated above apply to any claim or action pending on the effective date of the bill. There could be constitutional questions surrounding this provision in that it attempts to affect court suits for intentional torts pending on the bill's effective date. The Ohio Constitution prohibits the passage of retroactive laws, Article II, Section 28. The Ohio Supreme Court has made a distinction between a law that is remedial in nature which the General Assembly can affect retroactively and one that is substantive which may not be affected retroactively. In *Weil v. Taxicabs of Cincinnati, Inc.*, 139 Ohio St. 199, (1942), the Supreme Court held that the right to sue at common law was a substantive right.

Self-Insurance

Background

Under current law, the Industrial Commission may grant the privilege of self-insurance to an employer who agrees to abide by Commission rules pertaining to self-insurance and who possesses sufficient "financial" ability to render payment of compensation and benefits. Present law does not require the employer to have a minimum number of employees in order to be a self-insurer.

Self-insurers do not make premium payments to the State Insurance Fund, but are required to pay directly to employees the same medical benefits and types of compensation specified in the law for employees of the State Fund employers. Self-insurers also must contribute to the Disabled Workers' Relief Fund (but see later section of analysis), pay their share of the administrative costs of the workers' compensation program, and pay into the Statutory Surplus Fund (used for such expenses as rehabilitation services, payments made under the handicapped provisions of the law, and certain medical examinations).

The Industrial Commission may revoke the privilege of self-insurance if the employer does not comply with the Commission rules or fails to pay compensation and benefits on time in the amounts required. Self-insurers must post a surety bond to secure payment of compensation or benefits and may also sue the employer for any additional amounts owed in compensation of benefits beyond the value of the surety bond.

The bill

The bill makes the following changes relating to self-insurance:

(1) Requires all employers who are granted the privilege to self-insure to demonstrate sufficient financial and administrative ability assuring that all obligations of self-insurance status are promptly met. The bill requires the Commission to consider the following listed factors, if applicable, in determining whether or not the employer has the ability to meet the obligations for self-insurance status:

—the employer employs a minimum of 500 employees in Ohio;

—the employer has operated in Ohio for at least two years;

—the amount of the buy-out where the employer is a succeeding employer or previously contributed to the state fund;

—sufficiency of employer's assets in Ohio to assure solvency in paying compensation directly;

—a review of the employer's records necessary to provide the employer's full financial disclosure;

—the employer's organizational plan for the administration of workers' compensation law and procedures, for informing employees of his change in status to a self-insurer, that he will follow in as a self-insurer, and that informs employees of the employees' rights to compensation and benefits; and

—that the employer has a financial account in Ohio or has the workers' compensation claim checks drawn from the same account as payroll checks or such checks clearly indicate that payment will be honored by an Ohio financial institution.

Although the Commission is not limited to considering only the above factors, it must at least consider all of them, where applicable, except that the Commission may waive the requirements that an employer employ at least 500 employees and that the employer has operated in Ohio for at least two years. The bill prohibits the Commission from granting self-insurance status to public employers other than public utilities. The bill "grandfathers" in any public employers that currently are self insurers, but subjects them to the new procedures which could result in revocation of the privilege should they ever be found deficient in their program.

(2) The bill establishes procedures for employers to obtain applications for self-insurance status. Employers must obtain applications from both the Bureau and the Commission upon which the Bureau has stamped a "designating number." Prior to applying for self-insurance status, the employer must make available to the Bureau all of the information listed in paragraph (1) above. The employer must file the application, with a fee sufficient to cover the costs of processing the application, as established by the Commission, with both the Bureau and the Commission at least 90 days prior to the effective date of the employer's new status. The Commission and Bureau may not accept any application that does not contain all of the required information. Applications are not complete until all of the required information is provided.

The bill requires the Commission to review completed applications within a reasonable time and if it decides to grant the privi-

lege, the Bureau must issue a statement with the Commission's findings of fact. The statement must be prepared by both the Commission and the Bureau and be signed by the Chairman and Secretary of the Commission. If the Commission determines not to grant the privilege, the Bureau must notify the employer of the determination and require him to continue to pay his full premium into the State Insurance Fund.

The bill specifically authorizes the Industrial Commission to allow a self-insuring employer to resume premium payments (i.e., give up his self-insurance status) "with appropriate credit modifications to the employer's basic premium rate . . .." Presumably this last implies that the employer, in such a case, could be merit-rated (based upon his self insurance experience) immediately.

(3) Replaces the general surety bond requirement for self-insurers with the Self-Insuring Employers' Surety Bond Fund. Under the bill, a self-insurer must obtain from the Commission a surety bond in a face amount sufficient to cover his potential liability. The bonds provide payment to the Commission for amounts paid by the Commission for compensation or benefits on an employer's default. The Commission must operate the surety bond program for self-insurers and make the surety bonds available at competitive rates. The rates fixed each year are to be as low as possible but that assure sufficient reserves to cover anticipated claims.

Should any self-insurer default on payments of compensation or benefits, the Commission is to make payments from the employer's surety bond. The defaulting employer is relieved of any liability for damages that arise from the injury or occupational disease at common law or by statute, to the extent of the payment by the Commission.

Subject to the approval of the Commission, the Administrator may invest any of the Fund's surplus or reserve as he may currently the funds of the State Insurance Fund. All interest earned from the investments must be applied solely to the reduction of employers' premiums and to payments required on bonds due to default.

If the Commission determines that the reinsurance of the risks of the Fund are necessary to assure its solvency, it may:

(a) contract, for the purchase of reinsurance, with any company or agency authorized by law to issue such contracts;

(b) pay the reinsurance costs from the Fund;

(c) include the reinsurance costs as a liability and estimated liability of the Fund.

Neither the Industrial Commission nor the Administrator of the Bureau of Workers' Compensation is liable with respect to the management of the Fund, except in cases of gross abuse of discretion, nor is the state liable for any of the liabilities of the Fund itself.

Within six months following the effective date of the bill, the Commission must implement the Self-Insuring Employer Surety Bond Program by exchanging surety bonds or other security given to the Commission under former law. The exchange of such is deemed sufficient security to guarantee the liability of a self-insuring employer provided the surety remains in force and will pay any necessary compensation and expenses found to be due.

(4) Requires the Administrator to handle complaints regarding self-insurers through the Self-Insurance section of the Division.

(5) Creates the Self-Insuring Employers Evaluation Board, administratively part of the Bureau of Workers' Compensation, consisting of three members as follows: (1) the public member of the Industrial Commission who serves as the chairman of the Board; (2) a member of the Ohio Self-Insurance Association; and (3) a representative of labor. The two latter members must be appointed by the Governor, within 90 days after the effective date of the bill, with the advice and consent of the Senate with one serving an initial term of two years and one serving a term of three years. Thereafter, terms of office of the two members are for four years each. The members of the Board, other than the public member, receive a per diem amount fixed in the manner as the compensation of members of other boards and commissions is fixed as well as reimbursement for their actual and necessary expenses incurred in the performance of their duties.

The bill requires the Commission to refer all complaints against a self-insuring employer or questions as to whether a self-insuring employer continues to meet the standards for self-insurance to the Board, which must investigate, and if it has reasonable grounds to believe the allegations, to investigate. The Board may order the employer to take corrective action as the Board specifies. The Board action need not be by formal hearing, but whatever is ordered, it must be signed at least by two of the Board members. If by formal hearing, the Board subsequently determines that the employer has failed to correct the problems, the Board must recommend to the Commission revocation of the employer's self-insurance privilege or such other penalty which may include probation or a civil penalty not to exceed $10,000 for each employer failure. Where the recommendations specifically are for revocation, that must be by unanimous vote of the Board. The Board must make its recommendations to the Commission, and the Commission must promptly act upon them.

(6) Specifies that failure to meet the criteria for establishing the ability to self-insure is grounds for the Commission (the Self-Insuring Employers' Evaluation Board would make the actual determination) to revoke or refuse to renew the privilege of self-insurance. In addition, failure to pay contributions to the Self-Insuring Employers' Surety Bond Fund, "continued" failure to file medical reports bearing upon a claimant's injury, and failure to pay compensation or benefits in accordance with law in a timely manner are listed as grounds for revocation or denial of renewal. If a self-insurer is deficient in any one of the above, the Commission (Board) may revoke or refuse to renew the self-insurance status of an employer.

Premium Rates

For purposes of establishing workers' compensation premium rates, existing law requires the Industrial Commission to classify occupations or industries with respect to their degree of hazard and to determine the risks and establish the premiums of such risks for the classes based upon the total payroll in each of the classes. Such premiums must be sufficiently large to provide a fund for workers' compensation payments as well as to maintain the solvency of the fund.

The bill also permits the Industrial Commission to grant premium rate discounts to any employer who: (1) has not incurred a compensable injury for one year or more; and (2) maintains an employee safety committee or similar organization or makes periodic safety inspections of the workplace.

Alternative Premium Programs

Current law requires all state fund employers to participate in one system of workers' compensation premium rating. The bill requires the Commission, in conjunction with the Bureau to develop alternative premium programs from which an employer may choose. Such programs must include retrospective plans and may include plans under which an advanced deposit may be applied against a specified deductible amount per claim and risk pool plans. In no event, however, may the pooled risk plans be construed as granting the privilege to self insure. As an illustration of how such plans operate, a retrospective rating plan adjusts an employer's accident fund premiums after a designated coverage period. The plan is based on claim costs incurred during that period and employers who hold down claim costs are able to save money.

The Commission must, with the Bureau, develop classes of occupations or industries sufficiently distinct so that employers are not classified in a manner unfairly representing the risks of employment in that class.

Rehabilitation

The bill makes several changes in the area of workers' compensation rehabilitation. First, the bill creates the Labor-Management Government Advisory Committee consisting of 14 members as follows: (1) four labor and four employee representatives appointed by the Governor on the basis of their vocation and training (such appointees are subject to Senate confirmation); (2) the chairmen (or if the chairman chooses, the vice-chairman of the committee) of

the House and Senate standing committees to which workers' compensation bills are referred; and (3) two persons, each of differing political parties, appointed by the Speaker of the House and the President of the Senate, respectively, one representing labor and one employers. The duties of the Committee are: (1) to advise the Industrial Commission on the quality and effectiveness of rehabilitation services; (2) make recommendations pertaining to the Industrial Commission's rehabilitation program, including its operation; and (3) recommend three candidates for the Director of Rehabilitation, based upon their ability and background in rehabilitation. The bill requires the Industrial Commission to select the Director from this list of candidates.

The Industrial Commission must adopt a rule requiring payment in the same manner as living maintenance payments, to a claimant who completes a rehabilitation training program and returns to employment but suffers a wage loss. The payments must be made at 66-⅔% of the difference between the claimant's wage at the time of the injury and the wage received from his new employment up to a maximum payment per week equal to the statewide average weekly wage and may continue for a maximum of 200 weeks, reduced by the number of weeks in which the claimant receives the new form of wage loss benefits set up under the bill (see below).

For compensable lost-time claims, the Administrator must notify both the claimant and the employer of the availability of rehabilitation services.

Compensation and Benefits

Temporary total disability

Existing law authorizes compensation to an injured worker who is temporarily and totally disabled. A temporarily totally disabled worker generally receives 100% of his average weekly wage for twelve weeks, and then 66-⅔% of his average weekly wage until he returns to work. Compensation may continue for a maximum of 200 weeks, but ceases when: (1) an employee has returned to work; or (2) an employee's treating physician has made a written statement that the employee is capable of returning to his former position of employment. In *State, ex rel. Ramirez v. Industrial Commission*, 69 Ohio St. 2d 630 (1982) the Ohio Supreme Court has interpreted this language as permitting the employee to continue to receive compensation unless the employer can offer the employee his exact former position of employment.

The bill appears to modify the *Ramirez* decision by adding two additional factors that cease the payment of temporary total disability benefits: (1) when work within the physical capabilities of the employee is made available by the employer or another employer; and (2) when the employee has reached the "maximum medical improvement." The bill also states that the termination of temporary total disability does not preclude its commencement at another time if the employee again becomes temporarily totally disabled.

Wage Loss Compensation

The bill creates a new type of compensation as follows. If an employee in an allowable claim suffers a wage loss as a result of: (1) returning to employment other than his former position of employment; or (2) being unable to find employment consistent with his physical capabilities; the bill provides for compensation to him at 66-⅔% of his weekly wage loss, not to exceed the statewide average weekly wage, for a period not exceeding 200 weeks. This new form of compensation appears to be a substitute for temporary, partial disability compensation which the bill eliminates (see below).

The bill requires that an employee who is capable of work activity, but his employer has no job for him, to register with the Bureau of Employment Services which must assist him in finding suitable employment.

Partial disability and scheduled loss benefits

For permanent partial disabilities, other than disabilities indicated on the statutory list of types of losses, current law permits an employee to elect to receive:

(1) 66-⅔% of the impairment of his earning capacity resulting from the injury or occupational disease, not to exceed the average statewide weekly wage or a total of $17,500 (commonly known as temporary, partial disability compensation); or

(2) 66-⅔% of his average weekly wage, not to exceed 33-⅓% of the statewide average weekly wage, for the number of weeks which equals such percentage of 200 weeks (commonly known as permanent, partial disability compensation).

The bill eliminates temporary, partial disability and the election by an employee and provides for permanent partial disability as in (2) above. As under current law, permanent disability could not begin earlier than 40 weeks after the end of temporary total disability, or the new form of loss of wages compensation or the onset of the injury or disease in the absence of any compensation. Under the bill, an employee may receive both this benefit and scheduled loss benefits (see below). Current law provides for a deduction of permanent partial disability benefits paid from the scheduled loss benefits paid.

Scheduled loss compensation is paid for loss (or loss of use) of specific parts of the body. Compensation is paid at 66-⅔% of the worker's average weekly wage for the number of weeks indicated on the statutory list of types of losses. However, current law specifies a maximum weekly payment of 50% of the statewide average weekly wage, a minimum weekly payment of 25% of the statewide weekly average weekly wage. The bill retains the provision that the claimant receive 66-⅔% of his average weekly wage, but increases the maximum amount payable to an amount equal to the statewide average weekly wage and the minimum to 40% of the statewide average weekly wage.

Change of Occupation Benefits for Certain Listed Occupational Diseases

Under current law, employees who have contracted silicosis, coal miners' pneumoconiosis or asbestosis or a firefighter or police officer who contracts a cardiovascular or pulmonary disease and who change their occupation to an occupation in which exposure to the hazard is lessened, receive $49 per week for thirty weeks and then for a subsequent one hundred weeks 66-⅔% of the loss of wages resulting from the change in occupation not exceeding $40.25 per week (for firefighters and police officers, the time period is 75 weeks). The bill increases the maximum amount payable during the thirty-week period to an amount equal to 50% of the statewide average weekly wage and during the subsequent period to a new maximum of 50% of the statewide average weekly wage. During the subsequent period, the payment remains based on 66-⅔% of the employee's wage loss.

Employer Fines for Violation of Specific Safety Rules

The Ohio Constitution authorizes the Industrial Commission to add a penalty award payable to a claimant whose injury is caused by an employer's violation of a "specific safety requirement" of the Commission. This "additional" award may be anywhere from 15% to 50% of the maximum award fixed by law. By statute, the Commission is authorized to adopt rules fixing specific safety requirements applicable to all employers.

The bill specifically prohibits employers from violating specific safety requirements of the Commission or acts of the General Assembly. If, in making a determination as to whether to give a claimant an additional award, the Commission finds the employer has violated the prohibition, it must order the employer to correct the violation. For any violation occurring within 24 months of the last violation, the Commission must assess the employer a civil penalty in an amount the Commission fixes up to $50,000. The exact amount of the penalty is to be determined with reference to size of the employer as measured by number of employees, assets, and earnings.

An employer may appeal a penalty to a court which appeal operates to stay the payment of the penalty pending the appeal. All money paid is to be deposited in the Occupational Safety Loan Fund (see below).

Occupational Safety Loan Program

Commencing one year from the bill's effective date, the Industrial Commission must begin operating an Occupational Safety Loan Program. The program must provide loans to employers in amounts that cannot exceed more than $15,000 per fiscal year at interest rates below the rates the employer would otherwise be able to obtain from any other source.

The stated purpose of the loans is to allow employers to improve, install, or erect equipment that reduces hazards in the employer's workplace and to promote the health and safety of workers.

The bill establishes in the custody of the Treasurer of State an Occupational Loan Fund as the source of funding for the program.

Penal Institutions

The bill specifically prohibits the payment of compensation or benefits to any claimant during the period of his confinement in a penal institution for a violation of any state's criminal law.

Funeral Expenses

Current law provides a funeral expense not to exceed $1,200 for a death that ensues from an occupational disease or injury. The bill raises the maximum to $3,200.

Respiratory Diseases of Police and Firefighters

Existing law specifically identifies cardiovascular and pulmonary diseases of police and firefighters as occupational diseases. Compensation is payable only under certain conditions and subject to special statutes of limitations.

The bill expands the scope of the compensable occupational disease for such workers to include respiratory diseases.

Existing law requires that the disease to be contracted [occurs] following exposure to smoke, toxic gases, chemical fumes, and other toxic vapors. The bill changes the last to exposure to any toxic "substance" and adds "heat" as a factor to which if the policeman or firefighter is exposed, he may qualify for benefits.

The bill specifies that exposure to any of such agents constitutes "a presumption (which may be refuted by affirmative evidence), that such occurred in the course of and arising out of his employment."

Medical, Hospital, and Nursing Benefits for Certain Types of Occupational Diseases

Under existing law, compensation and benefits on account of cardiovascular and pulmonary diseases of firefighters, silicosis, asbestosis, and black lung are payable only in the event of total disability or death. The bill allows payments of medical, hospital, or nursing expenses in the event of partial disabilities.

Definition of "Injury," and "Occupational Disease"

Existing Workers' Compensation Law defines "injury" for the purpose of determining the situations that are subject to compensation. The definition specifically includes any injury whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment.

In *Village v. General Motors Corporation*, 15 Ohio St. 3d. 129 (1984), the Ohio Supreme Court determined that "an injury which develops gradually over time as the result of the performance of the injured worker's job-related duties is compensable" under the Workers' Compensation Law. In this case the employee had sustained a back injury, apparently due to the repeated lifting, in the course of his employment and over a five day period, of 20 to 40 pound automobile batteries. In reaching this decision the Court specifically overruled *Bowman v. National Graphics Corp.*, 55 Ohio St. 2d. 407 (1978) and "any other case which suggests that an injury must be the result of a sudden mishap occurring at a particular time and place to be compensable." (*Village* at p. 131).

The bill specifically excludes from the scope of the definition of "injury":

(1) psychiatric conditions except where the conditions have arisen from an injury or occupational disease;

(2) an injury or disability caused primarily by the natural deterioration of a tissue, organ or part of the body;

(3) injuries or disabilities incurred in voluntary participation in an employer-sponsored recreation or fitness program, provided the employee signs a waiver of his rights to workers' compensation benefits prior to engaging in the activity.

The bill statutorily defines "occupational disease" for purposes of workers' compensation law as a disease contracted in the course of employment, which by its causes and the characteristics of its manifestations or the condition of the employment results in a hazard which distinguishes the employment from other employment and creates a risk of contracting the disease in greater degree and different manner than the public in general.

The bill also provides that any disease which fits within this definition of occupational disease is compensable under the workers' compensation law even though it is not listed as an occupational disease.

Exemptions from Coverage

The bill exempts from the current definition of "employee" a minister or assistant minister in the exercise of his ministry or duties required of him. In effect, these individuals do not have to be covered under the workers' compensation law, but an employer may elect to include them as an employee.

Existing law does not allow compensation or benefits to persons who purposely injure themselves. To this exclusion, the bill adds injuries or disabilities caused by an employee being under the influence of drugs not prescribed by a doctor or caused by alcohol.

Compensation Plans

The bill permits the Industrial Commission, with the approval of the State Employee Compensation Board, to establish compensation plans, including hourly rate schedules, for the compensation of all professional, administrative and managerial employees of the Rehabilitation Division of the Commission for whom the State Employment Relations Board has not established bargaining units under Ohio's Collective Bargaining Law.

Handicapped

Under current law, if an employer hires a person having one of 24 specific pre-existing diseases or medical conditions, his premium rate for workers' compensation is not affected to the extent that any new injury suffered by that person is the result of the pre-existing disease or condition. For such cases, the bill specifies that state fund employers may not receive a credit amount greater than premiums paid and self-insurers an amount no greater than assessments, made in any credit year.

The bill permits self-insured employers, for all claims made after January 1, 1987, to pay handicap reimbursement compensation and benefits directly to the employee or his dependents. The bill specifies that where an employer elects to self insure his liabilities under this section, he must also assume the costs of handicapped reimbursement claims attributable to him occurring prior to January 1, 1987. If such an employer chooses to pay such benefits directly, he is not assessed for handicap reimbursements nor may he receive any benefit from the Surplus Fund for the payment of such benefits.

Current law identifies cardiovascular and pulmonary disease of firefighters as one of the list of injuries or diseases for which an employer may receive a "handicapped reimbursement" credit for employing workers with such diseases. As with the addition of "respiratory" diseases as a compensable occupational disease for firefighters and police officers (see previous section of analysis), the bill includes "respiratory" diseases and expands the entire provision to cover police officers which are not now included.

Medical Examinations

Existing law, unchanged by the bill, permits an employee who is injured or disabled in the course of his employment the free choice in the selection of a physician. The bill permits an employer, without Commission approval and at the employer's expense, to require such an employee who makes a claim to be examined by a physician of the employer's choice one time only upon any issue asserted

by the employee, his physician or upon any issue to be considered by the Commission. The Commission must consider and rule upon any further requests for examination. The bill requires the claimant to promptly provide a current signed release of medical information when requested by the employer.

Disabled Workers' Relief Fund

The Disabled Workers' Relief Fund (DWRF) provides supplemental payments to totally and permanently disabled persons experiencing a gradual erosion over time of the purchasing power of their fixed (at the time of injury) workers' compensation benefits. Currently, all employers are assessed a flat rate per $100 of payroll. That rate may not exceed 10¢ per $100 of payroll.

The bill also eliminates the current assessment of self-insuring employers for DWRF. For self insuring employers, the Bureau is required to make the DWRF payments due and bill the employers semi-annually for amounts owed. For all other employers, the bill requires that for injuries and disabilities occurring on or after January 1, 1987, an additional DWRF assessment must be levied at a rate per $100 of payroll determined for each separate classification of employer annually, in an amount sufficient to carry out the DWRF.

The bill specifies that a person found eligible for DWRF payments will receive monthly the lesser of the difference between the current maximum figure (roughly $766) and (1) any Social Security Disability benefit, or (2) his current permanent, total disability award per month.

The bill eliminates current law's prohibition that individuals who receive the minimum award for permanent total disability may not receive DWRF benefits.

Administrative Changes

The bill makes numerous administrative changes in the Workers' Compensation Law:

Joint-rulemaking

The bill requires the Bureau and the Commission to jointly adopt rules governing the operating procedures of the Bureau, regional boards of review, and the Commission. The Bureau is responsible for publishing the joint rules in a single publication.

Policy manuals

Currently, the Industrial Commission's medical section issues a Commission policy manual for impairment evaluations. The bill specifies that treating physicians of claimants or physicians to whom claimants are referred for evaluation must receive the manual free of charge and that the Commission must ensure that the manual receives the widest possible distribution to physicians.

Investigators

The bill permits a District Director, in addition to duties imposed by the Administrator of the Bureau, to assign investigators to investigate alleged violations of persons receiving compensation for permanent total disability and engaging in remunerative activity incompatible with that status.

Prompt Pay Procedures

Current law generally requires any state agency that purchases, leases, or otherwise acquires any equipment, materials, goods, supplies or services to pay an interest charge to the provider if it fails to make payment either by the date agreed upon between the agency and the provider or, if no such agreement was made, within 30 days after receipt of a proper invoice. An extension is allowed if the invoice contains defects or improprieties and the agency so notifies the provider within 15 days after receipt of the invoice.

Current law specifically exempts from the Prompt Pay Law bills submitted to the Industrial Commission and the Bureau of Workers' Compensation with respect to workers' compensation, public work-relief employees' compensation, coal-workers' pneumoconiosis benefits, or marine industry fund benefits. Law not included in the bill requires the Bureau's Administrator to adopt rules providing for the immediate payment of workers' compensation claims to hospitals, with a right of refund or deduction from payments on disallowed claims.

The bill eliminates the Bureau's and Industrial Commission's general exemption from the Prompt Pay Law and establishes specific procedures for applying the Prompt Pay Law to invoices submitted to the Bureau for equipment, materials, goods, supplies, or services provided in connection with claims for compensation under these programs for injuries or occupational disease. Invoices submitted to the Industrial Commission or the Bureau that are not covered by the bill's special procedures for claims would be subject to the general state Prompt Pay Law.

Special Prompt Pay Procedures Related to Workers' Compensation Claims

Payments in connection with a claim against the state Insurance Fund, Public Work-Relief Employees' Compensation Fund, [Coal] Workers' Pneumoconiosis Fund, or Marine Industry Fund as compensation for injuries or occupational disease would have to be paid either (1) by the payment date agreed to in writing between the Bureau and the provider, or (2) if no such agreement was made, within 30 days after receipt of a "proper invoice" or after the "final adjudication" allowing payment of an award to the claimant, whichever is later.

A "proper invoice" would have to include the claimant's name, claim number, date of injury, employer's name, provider's name and address, and description of the equipment, materials, goods, supplies, or services provided, the date provided, and the amount of the charge. When more than one item is included on a single invoice, each item must be considered separately in determining whether the invoice is a proper invoice.

A "final adjudication" would mean the latest of:

(1) The date of the decision or action by the Bureau, Industrial Commission, or a court allowing payment of an award to the claimant from which there is no further right to reconsideration or appeal that would require the Bureau to withhold compensation and benefits;

(2) The date on which rights to reconsideration or appeal have expired without an application for reconsideration or appeal having been filed;

(3) The date on which an application for reconsideration or appeal is withdrawn.

If the Bureau or Industrial Commission makes a modification with respect to prior findings, including a modification pursuant to court order, the adjudication process would no longer be considered final for purposes of the required payment date for invoices for goods or services provided after the modification if the propriety of those invoices is affected by the modification.

Procedure when proper invoice precedes final adjudication

When a proper invoice is received before a final adjudication has occurred with respect to a claim, the Bureau must notify the provider in writing of the claim's status and that the Bureau will process the invoice after the final adjudication. If the Bureau fails to provide this notice within 15 days after the invoice's receipt and the final adjudication allows payment of an award to the claimant that includes the item or service included in the invoice, the Bureau would have to pay interest charges as if the required payment date were the 30th day after the invoice's receipt.

Procedure when an invoice is defective

If prior to a final adjudication the Bureau determines that an invoice contains a defect, the Bureau must so notify the provider in writing at least 15 days before what would be the required payment date had there been no defect. The notice must describe the defect and note any additional information necessary to correct it. The required payment date will then be redetermined when the Bureau actually receives a proper invoice.

Statute of Limitations

Existing Workers' Compensation law requires employers to keep records of all injuries and occupational diseases received or contracted by employees in the course of their employment that result in seven days or more of total disability. Reports for injuries or death resulting from an injury must be made within one week after the occurrence of the injury or death while reports for injuries

or death resulting from an occupational disease must be made within one week after the occurrence of or diagnosis of or death from the disease. The bill replaces the reporting requirement timetable from occurrence or diagnosis to when the employer acquires knowledge and specifies that each day an employer fails to file such a report, adds a day to the applicable statute of limitations for filing claims. This extension of the statute of limitations, though, may not be for more than two additional years.

Regional Boards

Under the bill, the Industrial Commission may reassign workers' compensation claims to another board if the caseload of one board is sufficient to result in an unreasonable delay in hearing a claim. The board inheriting the claim must meet at the location of the original board to hear the reassigned claim. (Current law, unchanged by the bill, states that the Commission may at any time recall any claim and reassign it.)

Appeals to Court of Common Pleas

The bill broadens the current provisions on the jurisdiction of appeals of Commission decisions to the courts. Currently, injury and occupational disease claims are to be appealed to the court of common pleas of the county in which the injury was inflicted or in which the exposure to the cause of the disease occurred. Alternatively, injury claims may, under present law, be appealed to the court in the county in which the contract of employment was made, if the injury occurred out of the state. The bill creates two additional jurisdictional bases for bringing suit: (1) where the contract of employment was made, if the exposure to the disease occurred outside the state; and (2) if jurisdiction cannot be obtained through the above means, the appellant may use the venue provisions of the Ohio Rules of Civil Procedure to vest jurisdiction.

The bill also extends the application of certain procedures to cases pending before any court on appeal as of January 1, 1986.

Select Commission on Workers' Compensation Administration

The bill creates the Select Commission on Workers' Compensation Administration consisting of ten members, five members representing labor and five representing employers, appointed within 30 days of the effective date of the bill, by the Governor with the advice and consent of the Senate, with no more than five members being of the same political party.

The Select Commission must examine the administrative structures and duties of the Commission and Bureau to identify any overlap or duplication that may be eliminated or altered to improve the efficiency of the administration of the workers' compensation system and make a report and recommendation to the Governor and the General Assembly by July 1, 1987.

DWRF Liability

With the calendar year in which the bill takes effect and for the following nine years, the Industrial Commission must write off as a loss 1/10 of the unfunded liability of DWRF existing as of the bill's effective date.

Budget Requests

The Bureau and Commission must, within six months after the effective date of the bill, submit budgets and a detailed schedule for implementing the revisions of the bill to the Office of Budget and Management, the Legislative Budget Office and the Chairmen of Senate Finance and House Finance Appropriations Committees requesting funds to implement the revisions and modifications of the bill.

Rules for payment to health care providers

Existing law requires the Administrator of the Bureau to adopt rules with respect to payments made for health care providers for workers' compensation claims. The bill requires the Administrator to adopt rules that fully implement these provisions by no later than July 1, 1987.

Severability Clause

The bill expressly provides that if any action or provision of the bill is held invalid or unconstitutional by a court, that such a holding does not invalidate the other provisions or sections that may be given effect.

AMENDED HOUSE BILL NO. 355

Act Effective Date:	8-29-86
Date Passed:	5-14-86
Date Approved by Governor:	5-30-86
Date Filed:	5-30-86
File Number:	214
Chief Sponsor:	CONLEY

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act's section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

To amend section 713.21 of the Revised Code to permit a regional planning commission to purchase or receive as a gift property and buildings within which it is housed and carries out its activities.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 713.21 of the Revised Code be amended to read as follows:

713.21 Regional planning commission [Eff. 8-29-86]

The planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may co-operate in the creation of a regional planning commission, for any region defined as agreed upon by the planning commissions and boards, exclusive of any territory within the limits of a municipal corporation not having a planning commission. After creation of a regional planning commission, school districts, special districts, authorities, and any other units of local government may participate in the regional planning commission, upon such terms as may be agreed upon by the planning commissions and boards.

The number of members of such regional planning commission, their method of appointment, and the proportion of the costs of such regional planning to be borne respectively by the various municipal corporations, townships, and counties in the region and by other participating units of local government shall be such as is determined by a majority of the planning commissions and boards. Any member of a regional planning commission may hold any other public office and may serve as a member of a city, village, and a county planning commission, except as otherwise provided in the charter of any city or village. Such boards and legislative authorities of such municipal corporations, and the governing bodies of other participating units of local government, may appropriate their respective shares of such costs. The sums so appropriated shall be paid into the treasury of the county in which the greater portion of the population of the region is located, and shall be paid out on the certificate of the regional planning commission and the warrant of the county auditor of such county for the purposes authorized by sections 713.21 to 713.27, inclusive, of the Revised Code. The regional planning commission may accept, receive, and expend funds, grants, and services from the federal government or its agencies, from departments, agencies, and instrumentalities of this state or any adjoining state or from one or more counties of this state or

any adjoining state or from any municipal corporation or political subdivision of this or any adjoining state, including county, regional, and municipal planning commission of this or any adjoining state, or from civic sources, and contract with respect thereto, either separately, jointly, or cooperatively, and provide such information and reports as may be necessary to secure such financial aid. Within the amounts thus agreed upon and appropriated or otherwise received, the regional planning commission may employ engineers, accountants, consultants, and employees as are necessary and may rent or lease such space, purchase, lease, and lease with option to purchase such equipment, and make such purchases as it deems necessary to its use. THE REGIONAL PLANNING COMMISSION MAY PURCHASE, LEASE WITH OPTION TO PURCHASE, OR RECEIVE AS A GIFT PROPERTY AND BUILDINGS WITHIN WHICH IT IS HOUSED AND CARRIES OUT ITS RESPONSIBILITIES, PROVIDED THAT THE RULES OF THE COMMISSION PROVIDE FOR THE DISPOSITION OF THE PROPERTY AND BUILDINGS IN THE EVENT THAT THE COMMISSION IS DISSOLVED OR OTHERWISE TERMINATED.

The regional planning commission may establish such committees with such powers as it finds necessary to carry on its work, including an executive committee to make such final determinations, decisions, findings, recommendations, and orders as the rules of the regional planning commissions provide. All actions of such committees shall be reported in writing to the members of the commission no later than the next meeting of the regional planning commission or within thirty days from the date of the action, whichever is earlier. The commission may provide a procedure to ratify committee actions by a vote of the members. The commission may make agreements with other agencies, public or private, for the temporary transfer or joint use of staff employees, and may contract for professional or consultant services for or from other governmental and private agencies and persons.

SECTION 2. That existing section 713.21 of the Revised Code is hereby repealed.

HOUSE BILL NO. 397

Act Effective Date:	8-29-86
Date Passed:	5-14-86
Date Approved by Governor:	5-30-86
Date Filed:	5-30-86
File Number:	217
Chief Sponsor:	MALONE

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act's section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

To amend section 5901.02 of the Revised Code to include members of the Vietnam Veterans of America among those to be considered for appointment to county soldiers' relief commissions and to require that members who are required to be members of veterans' organizations be appointed from the organizations' recommendations.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 5901.02 of the Revised Code be amended to read as follows:

5901.02 Soldiers' relief commission [Eff. 8-29-86]

In each county there shall be a commission known as "the soldiers' relief commission" composed of five persons. Such persons shall be residents of the county and shall be appointed by a judge of the court of common pleas. Each member of the commission shall serve for five years.

~~Whenever possible one~~ EACH person on the commission shall be an honorably discharged or honorably separated veteran. ONE MEMBER SHALL BE A VETERAN of World War I and a member of the Veterans of World War I of the U.S.A. ~~or~~, a member of the Military Order of the Purple Heart of the U.S.A.; ~~one~~, OR A VETERAN OF THE VIETNAM CONFLICT AND A MEMBER OF THE VIETNAM VETERANS OF AMERICA. ONE person shall be a member of the American Legion; one person shall be a member of the Veterans of Foreign Wars; one person shall be a member of the Disabled American Veterans; and one person shall be a member of the AMVETS.

ON OR BEFORE THE FIFTEENTH DAY OF OCTOBER OF EACH YEAR, THE JUDGE OF THE COURT OF COMMON PLEAS WHO IS RESPONSIBLE FOR MAKING APPOINTMENTS TO THE COMMISSION SHALL NOTIFY EACH POST, CHAPTER, OR BARRACKS OF EACH ORGANIZATION WITHIN THE COUNTY FROM WHICH THE MEMBER MAY OR MUST BE APPOINTED THAT IT MAY SUBMIT AS MANY AS THREE RECOMMENDATIONS OF PERSONS, WHO ARE MEMBERS OF THE POST, CHAPTER, OR BARRACKS, FOR APPOINTMENT. IF NO SUCH POST, CHAPTER, OR BARRACKS IS LOCATED WITHIN THE COUNTY THE JUDGE SHALL SO NOTIFY EACH APPROPRIATE STATE ORGANIZATION THAT IT MAY SUBMIT AS MANY AS THREE RECOMMENDATIONS OF PERSONS, WHO ARE MEMBERS OF THE STATE ORGANIZATION AND RESIDE IN THE COUNTY, FOR APPOINTMENT. THE JUDGE MAY ALSO CONSIDER REAPPOINTING THE COMMISSION MEMBER WHOSE TERM IS EXPIRING, UNLESS THAT MEMBER IS NOT QUALIFIED FOR THE PARTICULAR APPOINTMENT. IF THE JUDGE DOES NOT RECEIVE ANY RECOMMENDATIONS WITHIN SIXTY DAYS AFTER PROVIDING SUCH NOTIFICATION HE MAY REAPPOINT THE MEMBER WHOSE TERM IS EXPIRING, IF HE IS QUALIFIED FOR THE PARTICULAR APPOINTMENT, OR APPOINT ANY OTHER PERSON WHO IS QUALIFIED FOR THE PARTICULAR APPOINTMENT AND IS A MEMBER OF THE ORGANIZATION FROM WHICH THE MEMBER MAY OR MUST BE APPOINTED. IF THE JUDGE DOES RECEIVE RECOMMENDATIONS BY THAT DATE HE MAY REJECT THE RECOMMENDATIONS AND REQUEST ADDITIONAL RECOMMENDATIONS. WHEN A VACANCY EXISTS, THE JUDGE SHALL MAKE THE APPOINTMENT ON OR BEFORE THE FIFTEENTH DAY OF JANUARY OF EACH YEAR.

SECTION 2. That existing section 5901.02 of the Revised Code is hereby repealed.

AMENDED SUBSTITUTE HOUSE BILL NO. 489

Act Effective Date:	5-21-86
Date Passed:	5-20-86
Date Approved by Governor:	5-21-86
Date Filed:	5-21-86